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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. APHIS–2006–0143]

RIN 0579–AC54

Potato Cyst Nematode; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining parts of Bingham and Bonneville Counties, ID, due to the discovery of the potato cyst nematode there and establishing restrictions on the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the potato cyst nematode to noninfested areas of the United States.

DATES: This interim rule is effective on November 1, 2007. We will consider all comments that we receive on or before November 13, 2007.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2006–0143 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

- *Postal Mail/Commercial Delivery:*

Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0143, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0143.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Osama El-Lissy, Director, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–8676.

SUPPLEMENTARY INFORMATION:

Background

We are amending the “Domestic Quarantine Notices” in 7 CFR part 301 by adding a new subpart, “Potato Cyst Nematode” (§§ 301.86 through 301.86–9, referred to below as the regulations). The regulations quarantine parts of Bingham and Bonneville Counties, ID, due to the discovery of the potato cyst nematode there and restrict the interstate movement of regulated articles from the quarantined area.

The potato cyst nematode (PCN) (*Globodera pallida*) is a major pest of potato crops in cool-temperature areas. Other solanaceous hosts include tomatoes, eggplants, peppers, tomatillos, and some weeds. The PCN is thought to have originated in Peru and is now widely distributed in many potato-growing regions of the world. PCN infestations may be expressed as patches of poor growth. Affected potato plants may exhibit yellowing, wilting, or death of foliage. Even with only minor symptoms on the foliage, potato tuber size can be affected. Unmanaged infestations can cause potato yield loss

ranging from 20 to 70 percent. The spread of this pest in the United States could result in a loss of domestic or foreign markets for U.S. potatoes and other commodities.

PCN is a soil-borne pest and is typically spread by the movement of infested soil, either soil itself or soil adhering to plants, farm equipment, or other articles. In some cases, PCN may be transported by wind and flood water.

In the absence of host plants on which to feed, PCN survives in soil as cysts. Mature brown cysts are the desiccated bodies of female nematodes, which contain eggs bearing juvenile nematodes. Each cyst may contain as many as 500 eggs. These durable cysts protect the eggs from physical damage, making it possible for the eggs to survive periods when host plants are not present. When host crops are present, PCN eggs are stimulated to hatch in the spring by chemicals exuded from the roots of the host crops. Once hatched, the juvenile nematode moves between soil particles and locates and invades host plant roots. The larvae will undergo three additional larval stages; the third and fourth stages occur inside the plant root. Once the larvae have entered the host plant root (usually at or near the growing point), they become sedentary. The females eventually become “sac-like,” with their posteriors protruding from the root, and can be seen as tiny white embedded objects along the host plant’s roots. When the females die, their body walls gradually harden and darken to form the cysts.

When the nematode eggs are in the cysts, they are able to withstand chemical treatment. Since the cysts can survive in the absence of host plants for up to 30 years under ideal conditions, eradication of PCN has typically required long-term efforts. However, fumigants have been found to be effective at significantly reducing nematode cyst population levels in the absence of host plants, and repeated fumigations over a period of years can be used as an eradication tool.

On April 13, 2006, nematode cysts from a sample of soil from a potato grading station in Idaho were confirmed to be PCN. Extensive traceback activities have determined that at least seven fields located in Bingham and Bonneville Counties, ID, are infested. Cysts recovered from a field were officially confirmed to be PCN by the

Animal and Plant Health Inspection Service's (APHIS) Plant Protection and Quarantine (PPQ) program on June 12, 2006. This is the first detection of PCN in the United States.

APHIS and the Idaho State Department of Agriculture are conducting ongoing detection and delimiting surveys of all fields adjacent to or otherwise potentially infested with PCN. A robust survey of fields where potatoes have been grown is currently taking place throughout the State of Idaho. Idaho has restricted the intrastate movement of certain articles from the infested area to prevent the spread of PCN within Idaho. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the infested area to prevent the spread of PCN to noninfested areas of the United States. This interim rule establishes those Federal regulations, which are described below.

Restrictions on Interstate Movement of Regulated Articles (§ 301.86)

Section 301.86 prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

Definitions (§ 301.86-1)

Section 301.86-1 contains definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service, associated field, certificate, compliance agreement, departmental permit, field, infestation (infested), infested field, inspector, interstate, limited permit, moved (move, movement), nursery stock, person, Plant Protection and Quarantine, potato cyst nematode, quarantined area, regulated article, and State.*

Regulated Articles (§ 301.86-2)

Certain articles present a risk of spreading PCN if they are moved from quarantined areas without restrictions. We call these articles regulated articles. Paragraphs (a) through (h) of § 301.86-2 list the following as regulated articles:

- Potato cyst nematodes;
- PCN host crops: Potato, eggplant, pepper, tomatillos, and tomato;
- Root crops;
- Garden and dry beans and peas;
- All nursery stock;
- Soil, compost, humus, muck, peat, and manure, and products on or in which soil is commonly found, including grass sod and plant litter;
 - Hay, straw, and fodder;
 - Any equipment or conveyance used in an infested or associated field that could carry soil if moved out of the field; and
 - Any other product, article, or means of conveyance that an inspector

determines presents a risk of spreading the potato cyst nematode, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of the regulations.

The last item listed above, which provides for the designation of "any other product, article, or means of conveyance" as a regulated article, is intended to address the risks presented by, for example, a truck with caked soil that could have come from an infested field; under this provision, an inspector would be able to designate that truck as a regulated article. This will allow an inspector to ensure that any measures necessary to mitigate the risk of spreading PCN are carried out.

Quarantined Areas (§ 301.86-3)

Paragraph (a) of § 301.86-3 describes the process by which the quarantined area for PCN is designated. Under this process, the Administrator will designate as a quarantined area each field that has been found to be infested with PCN, each field that has been found to be associated with an infested field, and any area that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from infested or associated fields.

In the past, we have published the description of the quarantined area for our domestic quarantines in the regulations for those quarantines. For the potato cyst nematode, we will instead publish the description of the quarantined area on the PPQ Web site at http://www.aphis.usda.gov/plant_health/plant_pest_info/potato_pcn.shtml. The description of the quarantined area will include the date the description was last updated and a description of the changes that have been made to the quarantined area. The description of the quarantined area may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories. After a change is made to the quarantined area, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined area.

Instead of including the description of the quarantined area in the regulations, the regulations set out a description of the criteria APHIS will use to designate a field as infested with PCN (an infested field) or as a field associated with an infested field (an associated field). These criteria are found in paragraph (c) of § 301.86-3. The regulations also state the conditions under which infested and associated fields will be removed

from quarantine in paragraph (d) of § 301.86-3. Because we will not be publishing the description of the quarantined area in the regulations, we will be able to update it more quickly if an infestation of PCN is detected, thus allowing us to take prompt action to prevent the spread of PCN and providing necessary information to affected parties in a more timely manner. We believe our description of the criteria by which infested and associated fields will be designated and how the quarantined area will be determined will provide adequate notice regarding the criteria by which we will make changes to the quarantined area. We invite public comment on this approach to providing the public with a description of the quarantined area.

Paragraph (b) describes the conditions for the designation of an area less than an entire State as a quarantined area. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

- The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and
- The designation of less than the entire State as a quarantined area will prevent the interstate spread of PCN.

We have determined that it is not necessary to designate the entire State of Idaho as a quarantined area. PCN has not been found in any area of the State other than portions of Bingham and Bonneville Counties, and Idaho has adopted and is enforcing restrictions on the intrastate movement of regulated articles from that area that are equivalent to those we are imposing on the interstate movement of regulated articles. Therefore, in accordance with the criteria described in the paragraphs (a) through (c) of § 301.86-3, we have designated the following area as a quarantined area:

Idaho. That part of Township 1 North, Range 37 East of the Boise Meridian that lies east and south of the Snake River, and sections 10 through 36 of Township 1 North, Range 37 East.

As mentioned earlier, paragraph (c) of § 301.86-3 sets out the criteria for designating a field as an infested or associated field. Paragraph (c)(1) states that the Administrator will designate a field as an infested field when PCN is found in the field. PCN is difficult to detect with the naked eye. It is typically found through surveys, soil sampling, and microscopic inspection.

Paragraph (c)(2) states that the Administrator will designate a field as

an associated field when PCN host crops, as listed in § 301.86–2(b), have been grown in the field in the last 10 years and:

- The field shares a border with an infested field; or
- The field came into contact with a regulated article from an infested field within the last 10 years; or
- Within the last 10 years, the field shared ownership, tenancy, seed, drainage or runoff, farm machinery, or other elements of shared cultural practices with an infested field that could allow spread of PCN, as determined by the Administrator.

Fields will only be designated as associated fields under the last criterion above if the Administrator determines that one of the circumstances listed means that PCN could have been spread from an infested field to the associated field. If an infested field and a noninfested field share cultural practices, but the Administrator determines that the specific cultural practice that is shared does not pose a risk of spreading PCN, the noninfested field would not be designated as an associated field.

It should be noted that, because soil is a regulated article under § 301.86–2(f), the unauthorized movement of soil from an infested field to another field will cause that field to be designated as an associated field.

Paragraph (d) of § 301.86–3 described the conditions under which fields will be removed from quarantine. Under paragraph (d)(1), an infested field will be removed from quarantine when a 3-year biosurvey protocol approved by APHIS has been completed and the field has been found to be free of PCN.

The biosurvey protocol involves planting PCN host crops in soil from a field and sampling the soil for PCN. This process must be repeated three times, over three crop cycles, with negative results in order for APHIS to declare the field to be free of PCN and thus to remove the quarantine from an infested field. We are confident that such a process will be sufficient to establish freedom from PCN.

One means to ensure that a field is free of PCN is to avoid planting host crops in it for at least 30 years; as noted earlier, PCN can survive for up to 30 years in a dormant state without any host crops to feed on. PPQ is also developing a plan for eradicating PCN in infested fields. A draft of the eradication plan has guided our initial eradication efforts. We will use the data we gather from these efforts to further refine the eradication plan. When the plan is finalized, we will make it available to the public. Regardless of the

eradication means used to ensure that a field is free from PCN, however, we would require the 3-year bioassay protocol to confirm that freedom.

Under paragraph (d)(2), an associated field will be removed from quarantine when the field has been found to be free of PCN according to a survey protocol approved by the Administrator as sufficient to support removal from quarantine. The survey protocol to designate an associated field as free of PCN is more thorough than the sampling process by which APHIS determines that PCN is not known to occur in a field, although not as intensive as the biosurvey protocol for infested fields. The additional steps required by the survey protocol to determine freedom are appropriate prior to releasing a field from quarantine entirely.

Paragraph (d)(3) states that if the Administrator has quarantined any area other than infested, adjacent, or associated fields because of its inseparability for quarantine enforcement purposes from infested or associated fields, as provided in paragraph (a) of this section, that area will be removed from quarantine when the relevant infested or associated fields are removed from quarantine.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (§ 301.86–4)

This section requires most regulated articles moving interstate from quarantined areas to be accompanied by a certificate or a limited permit. The articles must be moved in accordance with §§ 301.86–5 and 301.86–8 and under any additional conditions issued by the Administrator to prevent the spread of PCN. The U.S. Department of Agriculture (USDA or the Department) may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes.

Except for articles moved by APHIS or the Department, only a regulated article that is moved into the quarantined area from outside the quarantined area and that is accompanied by a waybill that indicates the point of origin may be moved interstate from the quarantined area without a certificate or limited permit. The article may not have been combined or commingled with other articles so as to lose its individual identity. Additionally, the article must be moved through the quarantined area without stopping (except for refueling and for traffic conditions such as traffic lights and stop signs), and the regulated article must not be unpacked or unloaded in the quarantined area.

Issuance and Cancellation of Certificates and Limited Permits (§ 301.86–5)

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (e.g., the article is from a field that has been surveyed for PCN by an inspector in the last 3 years and in which PCN has not been found, and no more than one PCN host crop has been grown in the field in the last 3 years), the regulated articles can be moved safely from the quarantined area without spreading PCN. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to specified destinations and movement for limited purposes. Section 301.86–5 explains the conditions for issuing a certificate or limited permit.

Paragraph (a) of § 301.86–5 sets out the conditions under which an inspector or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article. Paragraph (a)(1) provides that, to be eligible for a certificate, all regulated articles must be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of PCN. In addition, all regulated articles must be eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article. We have included a footnote (number 3) that provides an address for securing the addresses and telephone numbers of the local PPQ offices at which services of inspectors may be requested. We have also included a footnote (number 4) that explains that the Secretary of Agriculture may, under the Plant Protection Act, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that are, or that he or she has reason to believe are plants pests or are infested, infected by, or contain plant pests.

Specific requirements apply to the movement of certain other regulated articles. These requirements are listed in paragraphs (a)(2) through (a)(7) of § 301.86–5.

Paragraph (a)(2) contains specific requirements that must be fulfilled for an inspector to issue a certificate for the movement of nursery stock. This paragraph addresses three classes of nursery stock:

- *Potatoes intended for use as nursery stock* (i.e., seed potatoes) are prohibited from moving interstate from the quarantined area. Because potatoes are the primary host of PCN, the interstate movement of living potatoes for planting would pose an extremely high risk of spreading PCN if we allowed it to occur.

- *Nursery stock of PCN host crops other than potatoes*, as listed in § 301.86–2(b), must have been grown in a field that meets the following requirements:

- The field has been surveyed by an inspector for PCN at least once in the last 3 years;
- PCN has not been found in the field; and
- No more than one PCN host crop has been grown in the field in the last 3 years.

While these crops are not primary hosts, they could still serve as pathways for the spread of PCN; allowing their movement only from fields that have been surveyed and found to be free of PCN will effectively mitigate this risk.

- *Nursery stock of non-host crops* that is moved with soil (for example, nursery stock grown and moved in potting soil) must have been grown in a field that meets the requirements for nursery stock of PCN host crops listed above. The regulations include this requirement because the interstate movement of soil poses a high risk of spreading PCN, since PCN dwells in soil before infesting a host. Nursery stock of non-host crops that is moved without soil must have been found by an inspector to be free of soil on its roots and on all other parts of the plant, in order to ensure that the movement of nursery stock of these non-host crops poses no risk.

Paragraph (a)(3) addresses the movement of potatoes and root crops for consumption. Uses of potatoes and root crops produced for consumption include both table consumption and processing into products such as frozen french fries. Both potatoes and root crops moved for consumption are likely to carry soil, which poses a risk of spreading PCN. (Potatoes grown for use as nursery stock [seed potatoes] cannot be easily converted into potatoes grown for consumption.) Under paragraph (a)(3), an inspector may issue a certificate for the movement of potatoes or root crops intended for consumption from the quarantined area only if the

field in which the potatoes or root crops have been grown meets the following requirements:

- The field has been surveyed by an inspector for PCN at least once in the last 3 years and prior to the planting of the potatoes or root crops;
- PCN has not been found in the field; and
- No more than one PCN host crop has been grown in the field the last 3 years.

Paragraph (a)(4) addresses soil and associated products. An inspector may issue a certificate for the interstate movement of a regulated article listed in § 301.86–2(e), which includes soil, compost, humus, muck, peat, and decomposed manure, and products on or in which soil is commonly found, including grass sod and plant litter, only if the article originated in a field that meets the following requirements:

- The field has been surveyed by an inspector for PCN at least once in the last 3 years;
- PCN has not been found in the field; and
- No more than one PCN host crop has been grown in the field the last 3 years.

Paragraph (a)(5) addresses hay, straw, and fodder. These commodities also pose a risk because they may have soil attached. Accordingly, an inspector may issue a certificate for the movement of hay, straw, or fodder from the quarantined area only if the field where the hay, straw, or fodder was produced meets the following requirements:

- The field has been surveyed by an inspector for PCN at least once in the last 3 years;
- PCN has not been found in the field; and
- No more than one PCN host crop has been grown in the field the last 3 years.

Alternatively, an inspector may issue a certificate for the interstate movement of hay, straw, or fodder if it is produced according to procedures judged by an inspector to be sufficient to isolate it from soil throughout its production and handling. Isolation of stored hay, straw, or fodder from soil is commonly accomplished by using asphalt, gravel, concrete, tarpaulins or pallets.

Paragraph (a)(6) addresses equipment used in infested or associated fields. An inspector may issue a certificate for the interstate movement of equipment that has been used in an infested or associated field and that could carry soil if moved out of the field only after the equipment has been pressure-washed under the supervision of an inspector to remove all soil or steam-treated in accordance with 7 CFR part 305. If

properly performed, the pressure-washing will remove all soil from the farm equipment, and the soil adhering to the farm equipment is what poses a risk of spreading PCN from the quarantined area. Properly performed steam treatment kills PCN.

Paragraph (b)(1) of § 301.86–5 sets out general conditions for the issuance of a limited permit. An inspector may issue a limited permit for the interstate movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization, or processing, and that the movement will not result in the spread of PCN because life stages of PCN will be destroyed by the specified handling, processing, or utilization. A limited permit will only be issued if the regulated article will be moved in compliance with any additional emergency conditions imposed by the Administrator under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of PCN, and if the regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (b)(2) sets out specific conditions for the issuance of a limited permit for the interstate movement from the quarantined area of potatoes intended for consumption. We anticipate that potatoes intended for consumption that are not eligible to move from the quarantined area with a certificate under paragraph (a)(3) may nonetheless need to be moved from the quarantined area for packing or processing. This paragraph sets out specific conditions under which they may be moved. An inspector may issue a limited permit to allow the interstate movement of potatoes from the quarantined area for packing or processing only if:

- The potatoes are transported in a manner that prevents the potatoes and soil attached to the potatoes from coming into contact with agricultural premises outside the quarantined area; and
- The potatoes are processed and packed at facilities that handle potatoes, waste, and waste water in a manner approved by APHIS to prevent the spread of PCN.

As a matter of policy, we will not issue limited permits for potatoes grown in an infested field if they are grown in any year following the year in which PCN is initially detected in the field.

Paragraph (c) of § 301.86–5 allows any person who has entered into and is operating under a compliance agreement to issue a certificate or

limited permit for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.86–5(a) or (b).

Also, § 301.86–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with all of the provisions for the use of the document or with all the conditions contained in the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Compliance Agreements and Cancellation (§ 301.86–6)

Section 301.86–6 provides for the use of and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from quarantined areas. A person may enter into a compliance agreement when an inspector has determined that the person requesting the compliance agreement has been made aware of the requirements of the regulations and the person has agreed to comply with the requirements of the regulations and the provisions of the compliance agreement. This section contains a footnote (number 7) that explains where compliance agreement forms may be obtained.

Section 301.86–6 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

Assembly and Inspection of Regulated Articles (§ 301.86–7)

Section 301.86–7 provides that any person (other than a person authorized to issue certificates or limited permits under § 301.86–5(c)) who desires a certificate or limited permit to move regulated articles must request, at least 48 hours before the desired interstate movement, that an inspector issue a certificate or limited permit. The regulated articles must be assembled in a place and manner directed by the inspector.

Attachment and Disposition of Certificates and Limited Permits (§ 301.86–8)

Section 301.86–8 requires the certificate or limited permit issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the consignee's copy of the accompanying waybill. Further, the section requires that the carrier or the carrier's representative must furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

Costs and Charges (§ 301.86–9)

Section 301.86–9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that APHIS will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

Treatments in 7 CFR Part 305

The phytosanitary treatments regulations contained in 7 CFR part 305 set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. Within 7 CFR part 305, § 305.2 lists approved treatments for pests associated with certain articles regulated in 7 CFR parts 301, 318, and 319.

Certain treatments listed in § 305.2 are approved for treating the golden nematode (*G. rostochiensis*) but not PCN. Due to the similar biology of these two pests, we believe that treatments approved to treat the golden nematode will be effective at treating PCN. Accordingly, we are amending § 305.2 to amend certain treatments for the golden nematode to approve their use on PCN as well. These treatments are:

- Steam sterilization treatment T–406d, used for construction equipment without cabs, used farm equipment without cabs, and used containers; and
- Steam cleaning treatment T–406c, used for automobiles and used farm equipment with cabs.

Section 305.2 also contains treatments for soil products that are approved to treat *G. rostochiensis*. However, the risk

associated with moving soil from the PCN quarantined area is such that we are only allowing soil and soil products to move from the quarantined area with a certificate if they are from a field that has been surveyed by an inspector and found to be free of PCN. Therefore, we are not approving any of the treatments for soil products in § 305.2 to be used to treat PCN.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of PCN to noninfested areas of the United States.

This rule is being made effective on November 1, 2007, because the potato harvesting season in Idaho ends on that date, and regulated parties will need time to prepare for the changes in operations that will become necessary when this rule becomes effective. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

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

We are quarantining part of Bingham and Bonneville Counties, ID, because of the presence there of PCN and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of PCN to noninfested areas of the United States.

Tests conducted by PPQ on June 12 and July 13, 2006, confirmed the presence of PCN in soil samples taken from two fields in Bingham County. Subsequently, four additional fields in Bingham County and one field in Bonneville County were found to be infested. This is the first detection of PCN from fields in the United States.

In addition to potatoes, tomatoes, eggplant, peppers, tomatillos, and some

weeds also serve as host to the potato cyst nematode. The interim rule regulates the movement of potatoes and other host crops, as well as plants with roots, root crops, soil, any equipment used on farms that can carry soil, and any other products, articles, or means of conveyance when determined by an inspector to present a hazard of spread of PCN.

Three different classes of nursery stock are regulated under the rule:

- Seed potatoes;
- Other host nursery stock (i.e. tomatoes, eggplant, peppers, and tomatillos); and
- Non-host nursery stock that is moved with soil.

Seed potatoes are prohibited from moving interstate from the quarantined area since this would pose a high risk of spreading PCN. Other host nursery stock and non-host nursery stock in soil may be moved out of the quarantined area if either originates from a field that has been inspected at least once in the last three years, the field has been found to be free of PCN, and no more than one PCN host crop has been grown in the field in the last three years. Non-host nursery stock that is bare-rooted may be moved from the quarantined area after inspection to ensure the roots and all other plant parts are free of soil.

Potatoes and root crops for consumption are allowed to move interstate from the quarantined area if the articles originate from a field found to be free of PCN, potatoes were grown in a field in which no more than one potato crop was grown in the previous

3 years, and articles are accompanied by a certificate. Soil, compost, humus, muck, peat, and manure, and products on or in which soil is commonly found, as well as hay, straw, or fodder may also move interstate from the quarantined area following the same criteria as that for potatoes and root crops for consumption. Interstate movement of equipment that has been used in an infested or associated field is allowed after the equipment has been pressure-washed under the supervision of an inspector to remove all soil or after it has been steam-treated.

Potatoes for consumption that are not eligible to move from the quarantined area with a certificate are allowed to move from the quarantined area under limited permit if they are moved and processed under conditions designed to prevent the spread of PCN. APHIS will not issue limited permits for potatoes grown in an infested field if they are grown in any year following the year in which PCN is initially detected in the field. There are no domestic restrictions against the movement of processed products.

APHIS is adding provisions for compliance agreements for entities operating inside the quarantined area to issue certificates and limited permits. An infested field will only be removed from quarantine after the completion of a 3-year biosurvey protocol approved by APHIS to determine whether the field is free of PCN. One means to ensure freedom of a field from PCN is not planting host crops in the area for at

least 30 years; another is following the APHIS eradication plan. The list of quarantined areas will be maintained on the PPQ Web site.

*U.S. production and exports.*¹ Potatoes, excluding sweet potatoes, are a staple crop grown in a majority of U.S. States. They are also the lead vegetable crop in the United States. The Russet variety, which is planted in the spring and harvested in the fall, accounts for approximately 75 percent of the total U.S. acreage planted to potatoes. Ninety percent of all potatoes are harvested in the fall, with the remaining 10 percent harvested in the other three seasons. This 10 percent of production accounts for specialty varieties that typically command higher prices, such as round white, red, yellow, and purple potatoes.

From 2000 to 2005, acreage planted to fall potatoes and production of this variety decreased by 9 percent throughout the United States. The decline in Idaho's acreage and production was sharper, falling by 22 percent and 23 percent, respectively. Yields over the same period remained relatively stable in the United States as a whole and Idaho in particular. Fall potatoes are marketed year-round from July (early harvest areas) through June. Potatoes can be stored for long periods of time. This storage capability allows flexibility in marketing; sellers can hold their crop until more favorable prices prevail on the market. Fresh potatoes are mainly sold on the open market, not contracted. Processing potatoes, on the other hand, are typically contracted.

TABLE 1.—PRODUCTION AND FARM PRICES OF FALL POTATOES IN THE UNITED STATES, IDAHO, BINGHAM COUNTY, IDAHO, AND BONNEVILLE COUNTY, IDAHO, 2000–2005

	United States			Idaho				Bingham County, ID		Bonneville County, ID	
	Production	Farm price		Production	Farm price			Production	Farm price	Production	Farm price
		Table stock	processing		Table stock	Processing	All uses				
	1,000 Cwt.	\$ per Cwt.		1,000 Cwt.	\$ per Cwt.			1,000 Cwt.	\$ per Cwt.	1,000 Cwt.	\$ per Cwt.
2000	467,529	\$5.27	\$4.70	152,320	(a)	(a)	\$4.00	25,104	(b)	9,000	(b)
2001	393,631	10.79	5.05	120,200	(a)	(a)	6.15	18,330	(b)	8,136	(b)
2002	413,581	9.59	5.16	133,385	(a)	(a)	5.00	20,000	(b)	9,204	(b)
2003	410,588	7.32	5.10	123,180	\$3.85	\$4.30	4.40	19,598	(b)	8,537	(b)
2004	410,253	6.76	5.06	131,970	3.40	4.50	4.25	20,740	(b)	9,070	(b)
2005	423,926	10.04	5.21	118,288	6.90	4.90	5.70	18,080	(b)	8,250	(b)

^a Prices by use not available for these years.

^b No data available for prices at the county level.

Source: USDA, NASS, *Potatoes: 2005 Summary*, September 2006 and USDA, NASS, Idaho Office, *County Estimates: Potatoes 2005*, September 2006.

The United States ranks fourth in the world in potato production, trailing China, Russia, and India. Historically, the United States has been a net exporter of potatoes in value terms, with

exports of processed potatoes accounting for a large portion of this surplus. In 2003 and 2004, an increase in imports of processed products from Canada tipped this balance so that the

United States ran a trade deficit in those years. However, the imports of Canadian goods returned to historical levels in 2005, and the United States regained its status as a net exporter. Exports of

¹ Most information in this section is derived from the Economic Research Service's Potato Briefing

Room, available online at: <http://www.ers.usda.gov/Briefing/Potatoes/>.

potatoes are on the rise and now account for approximately one-third of the value of farm sales. Over half of these exports are processed products, primarily frozen french fries. Japan is the United States' largest importer of frozen fries, followed by Mexico and Canada. Canada is the largest supplier of U.S. potato imports.

Although historically Japan has been the largest importer of U.S. frozen potato products, that country banned imports of fresh potatoes from the United States starting in the 1950s. However, in February of 2006, Japan opened its market to the importation of fresh potatoes from approved facilities in 14 States: Arizona, California, Colorado, Florida, Idaho, Maine, Michigan, Minnesota, New Mexico, North Dakota, Texas, Oregon, Washington, and Wisconsin. The outbreak of PCN in Idaho led to Japan's reimplementing of its ban on fresh potatoes from the United States.

Idaho production and exports. Idaho specializes in production of fall potatoes. According to National Agricultural Statistics Service (NASS) data, there were no spring, summer, or winter potatoes produced in Idaho from 2000 to 2005. Over 65 percent of U.S. fall potatoes are grown in the Western States. Idaho and Washington account for 50 percent of the U.S. total, where planted acreage in Idaho is more than double that in Washington. Idaho's importance to the domestic potato industry also makes this State influential in the world market for potatoes. Idaho exports a substantial amount of potatoes on a yearly basis. However, the majority of these exports is in a processed form rather than fresh. This analysis only focuses on the fresh market since this is the portion that will be affected by the interim rule.

From 2001 to 2006, Idaho exported on average \$6.2 million worth of table potatoes to countries around the world.

On average, a large portion, 67 percent, of Idaho's fresh exports was destined for Canada. Mexico also imported potatoes from Idaho, accounting for 23 percent of Idaho exports. Japan, as mentioned previously, historically has prohibited imports of fresh potatoes from the United States. Thus, although Japan is a substantial importer of processed products, its imports of fresh potatoes are negligible or nonexistent. Together, Canada and Mexico accounted for approximately 90 percent of Idaho exports between 2001 and 2006, although Idaho's fresh potato sales worldwide and the combined share exported to Canada and Mexico have fluctuated substantially (table 2). Mexico has been an expanding market, with sales increasing 90-fold over this 6-year period, while exports to Canada have declined by more than half. In 2005, Idaho's potato exports to Mexico exceeded its potato exports to Canada for the first time.

TABLE 2.—IDAHO EXPORTS OF FRESH POTATOES BY COUNTRY, 2001–2006

	World	Canada		Mexico		Japan	
	Exports (\$1,000)	Exports (\$1,000)	Percentage of total	Exports (\$1,000)	Percentage of total	Exports (\$1,000)	Percentage of total
2001	\$3,622	\$3,209	88.6	\$34	0.9	\$43	1.2
2002	3,472	3,200	92.2	12	0.3	0	0.0
2003	1,988	1,988	100.0	0	0.0	0	0.0
2004	1,485	1,096	73.8	338	22.8	0	0.0
2005	6,643	1,485	22.4	2,967	44.7	0	0.0
2006	4,518	1,190	26.3	3,086	68.3	0	0.0

Source: Global Trade Information Services, *World Trade Atlas: U.S. State Export Edition*, April 2007.

Alternatives available to producers. Under the interim rule, producers have two options for dealing with an infestation of PCN. The first of these is a quarantine program. Under this program, producers are prohibited from planting potatoes or any other host crop in the quarantined area for a minimum of 30 years. APHIS has determined that not planting host material for this amount of time will ensure that the PCN infestation has died out before the quarantine is lifted. This is based on the fact that PCN can survive for up to 30 years in a dormant state without any host crops on which to feed.

Eradication is the second option available to affected potato producers. APHIS is currently working on a PCN eradication protocol. However, an approved protocol is not yet available. The eradication protocol will prevent producers from planting any crops on PCN affected and associated fields for a specified amount of time. However, APHIS will assume the costs of eradication for those producers wishing

to participate in this program, to the extent that funds are available.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the expected impact of rules on small entities. Sections 603(b) and 603(c) of the Act specify the content of an IRFA. In this section, we address these IRFA requirements.

Reasons for Action

APHIS is taking these actions based on the finding of PCN in Idaho. The quarantine measures are intended to curtail the spread of PCN to other areas of Idaho and the United States. The rule is likely to benefit a majority of potato producers in that it safeguards their fields from infestation. Additionally, declines in production resulting from

the quarantine are not expected to be significant since the number of acres on which potatoes would not be grown accounts for only 0.3 percent of Idaho's potato acreage.²

Objectives and Legal Basis for Rule

The objective of the interim rule is to prevent the spread of PCN by quarantining infested or associated fields or implementing APHIS approved eradication protocols for these fields. A widespread outbreak of PCN in Idaho could have devastating consequences for the U.S. potato industry. APHIS believes the implementation of the quarantine or eradication program and related movement restrictions will prevent the pest from spreading to other areas in Idaho and the rest of the United States.

This rule amends 7 CFR part 301 by adding a new subpart regulating PCN. The legal basis for the implementation

² Currently, 916 acres are considered to be infested and would, therefore, be ineligible for planting host crops.

of a quarantine to prevent the spread of PCN may be found in the Plant Protection Act (7 U.S.C. 7701 *et seq.*), which authorizes the Secretary of Agriculture to implement programs and policies designed to prevent the introduction and spread of plant pests and diseases.

Description and Estimated Number of Small Entities Regulated

The PCN regulations being imposed by APHIS are intended to prevent the spread of the pest to additional areas. Approximately 2,500 of the 330,000 acres planted to potatoes in Idaho are regulated under the current quarantine as imposed by the Federal Order. The potential economic impacts of regulating this area are presented in the following paragraphs.

Given a quarantined area of approximately 2,500 acres, 800,100 pounds of production are estimated to be affected by the rule.³ A reduction in production of this magnitude is not likely to have a significant economic impact on the potato industry. Despite the minimal impacts on domestic production, export markets have been closed due to the PCN outbreak. While Canada and Mexico have banned imports of fresh potatoes from Idaho,

Japan has banned imports of fresh potatoes produced anywhere in the United States. However, export statistics indicate that the vast majority of U.S. potatoes are consumed domestically. From 2000 to 2005, exports of fresh and processed potatoes amounted to approximately 7 percent of domestic production. Based on current restrictions on U.S. imports resulting from the PCN outbreak, we expect exports to decline by approximately 19 percent, accounting for less than 2 percent of domestic production. The reduction in the value of exports is expected to be larger, since the United States exports more processed products than table potatoes. However, given that domestic demand and supply can fluctuate by as much as 4 percent from one year to the next coupled with the potato's storage capability, it is likely that the domestic market will be able to absorb the excess supply created by import bans placed on U.S. potatoes because of the discovery of PCN in certain parts of Idaho.⁴

Producers subject to the quarantine may be negatively impacted by this regulatory action. Those with infested fields will not be able to plant any host crop, including potatoes, tomatoes, or eggplant, for at least 30 years if they are

seeking to remove their fields from quarantine, unless a PCN eradication protocol approved by the Administrator is developed. However, producers may plant non-host crops on the quarantined acreage. In Bingham County, ID, the area planted to potatoes is second only to that planted to wheat. Producers in this county also grow corn, oats, barley, sugarbeets, and alfalfa hay. Based on historical production (table 3) and farmers' desire to make a profit, it is likely that farmers in the quarantined area would choose to plant one of these crops rather than forgo 30 years of revenue which could be generated from the land under quarantine. The planting decision would be a function of market prices, input costs, and expected government payments for those commodities classified as a program crop. Farmers may choose to plant one commodity or multiple commodities depending on these factors. Given alternative production opportunities, it is not clear how producers in the quarantined area would be affected. If the crops mentioned above are viable substitutes in production for the ineligible crops, producers will likely not face substantial impacts due to the quarantine regulations. APHIS welcomes public comment on this issue.

TABLE 3.—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN BINGHAM COUNTY, ID, 2000–2005

	Wheat	Barley	Hay	Potatoes
	Harvested acres			
2000	132,200	22,500	52,300	67,000
2001	117,500	21,300	54,300	55,200
2002	116,500	22,500	67,000	59,700
2003	109,000	28,700	66,900	60,300
2004	117,500	26,900	64,500	56,000
2005	122,200	24,300	61,600	52,200
	Production (1,000 Pounds)			
2000	858,600	104,016	517,600	2,510,400
2001	660,000	95,184	472,800	1,833,000
2002	682,200	100,224	568,400	2,000,000
2003	680,400	123,360	512,000	1,959,800
2004	795,600	133,440	514,000	2,074,000
2005	807,960	121,152	583,800	1,808,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops*, October 2006.

³ Estimates are based on historical yields from Bingham and Bonneville Counties and the estimated number of acres quarantined under the rule. An average of the yields from 2000 to 2005 excluding the high and low yields from the period

is multiplied by the number of acres quarantined to estimate the level of production for the quarantined area. The production numbers for the two counties are then averaged to obtain the estimate reported above.

⁴ Only reductions of U.S. potato imports by other countries attributable to the presence of PCN in certain areas of Idaho are considered here.

TABLE 4.—HARVESTED ACREAGE AND PRODUCTION OF VARIOUS CROPS IN BONNEVILLE COUNTY, ID, 2000–2005

	Wheat	Corn (grain)	Corn (silage)	Oats	Barley	Hay	Potatoes
	Harvested acres						
2000	4,185,000	0	40,000	42,000	4,746,000	128,500	9,000,000
2001	3,200,000	20,000	39,100	77,000	4,910,000	121,000	8,136,000
2002	2,980,000	0	59,000	58,000	5,840,000	128,400	9,204,000
2003	2,420,000	.....	.....	33,000	4,380,000	124,000	8,537,000
2004	3,580,000	12,000	97,000	33,000	6,572,000	127,400	9,070,000
2005	3,065,000	170,000	114,000	15,000	6,904,000	131,600	8,250,000
	Production (1,000 Pounds)						
2000	251,100	0	80,000	1,344	227,808	257,000	900,000
2001	192,000	1,120	78,200	2,464	235,680	242,000	813,600
2002	178,800	0	118,000	1,856	280,320	256,800	920,400
2003	145,200	.....	.....	1,056	210,240	248,000	853,700
2004	214,800	672	194,000	1,056	315,456	254,800	907,000
2005	183,900	9,520	228,000	480	331,392	263,200	825,000

Source: USDA, NASS, Quick Stats Database, *U.S. and All States County Data—Crops*, October 2006.

The eradication program will involve planting cover crops rather than commercial crops for a predetermined amount of time. However, for those producers wishing to participate in the eradication program, APHIS will assume the costs of implementing eradication protocols it determines to be effective, to the extent that funds are available.

Impacts of the rule on the domestic market are likely to be small, and the benefits of the quarantine are expected to outweigh the costs. Widespread dissemination of the pest would likely translate into significant economic losses for producers and processors. Left unchecked, PCN attacks the roots of the potato plant, leaching nutrients from the plant itself, which in turn reduces yields, leading to significant declines in production. Additionally, import bans implemented by U.S. trading partners would likely be more widespread and may take longer to remove.

The rule may affect domestic producers of potatoes, as well as potato processing firms. It is likely that the entities affected would be small according to Small Business Administration (SBA) guidelines. A discussion of these impacts follows.

Affected U.S. potato producers are expected to be small, based on 2002 Census of Agriculture data and SBA guidelines for entities in the farm category Potato Farming, Field, and Seed Potato Production (North American Industry Classification System [NAICS] code 11211). The SBA classifies producers in this farm category with total annual sales of not more than \$750,000 as small entities. APHIS does not have information on the size distribution of the affected

producers, but according to 2002 Agriculture Census data, there were a total of 25,017 farms in Idaho in 2002.⁵ Of this number, approximately 95 percent had annual sales in 2002 of less than \$500,000, which is well below the SBA's small entity threshold of \$750,000 for commodity farms.⁶ This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 121 potato farms located in Bingham County, ID, and the 47 potato farms located in Bonneville County, ID, that may be affected by this rule also qualify as small. Potato packing firms classified as NAICS 115114 (Postharvest Crop Activities (except Cotton Ginning)) are considered small if they have not more than \$6.5 million in total annual sales. According to the County Business Patterns report for Idaho published by the Census Bureau, there were 30 post-harvest establishments in Idaho in 2002, the latest date for which numbers were published. Of these, two were located in Bingham County, and six were located in Bonneville County. That report does not report the value of total annual sales or the distribution of annual sales for firms in this category. Thus, it is not known what percentage of potato packing firms would be considered small.

In the case of potato processors, establishments classified within NAICS 311411 (Frozen Fruit, Juice, and Vegetable Manufacturing), NAICS 311423 (Dried and Dehydrated Food Manufacturing), NAICS 311919 (Other Snack Food Manufacturing), and NAICS 311991 (Perishable Prepared Food

Manufacturing) with not more than 500 employees are considered small by SBA standards. Data from the Economic Census shows that in 2002, there were a total of 235 frozen fruit, juice, and vegetable manufacturing establishments, including firms manufacturing frozen french fries, in the United States. Of these firms, 215 or 92 percent employed fewer than 500 employees and were, therefore, considered small by SBA standards. There were 181 dried and dehydrated food manufacturing establishments in 2002. Included in this category are manufacturers of dehydrated potato products. There were 176 firms with fewer than 500 employees in this category, accounting for 97 percent of all firms. For other snack food manufacturing establishments, which includes firms manufacturing potato chips, there were 338 establishments in the United States in 2002. Of these establishments, 322 (over 95 percent) had fewer than 500 employees. Firms manufacturing peeled or cut potatoes, included in the perishable prepared food manufacturing category, numbered 610 in 2002. Of these, 603 (99 percent) had no more than 500 employees.⁷ Based on this information, it is reasonable to conclude that domestic producers and potato processors that may be affected by the rule are predominantly small entities.

Based on the data available to APHIS, benefits to producers outside the regulated area of curtailing the spread of the pest will likely outweigh the costs borne by producers in the affected area. Major importers of fresh potatoes from Idaho, including Canada and Mexico, have lifted their original import

⁵ This number represents the total number of farms in Idaho, including farms producing potatoes.

⁶ Source: SBA and 2002 Census of Agriculture.

⁷ Source: SBA and 2002 Economic Census.

prohibitions and now allow imports of fresh potatoes from Idaho subject to certain restrictions, including that the potatoes did not originate from the regulated area. Since the United States exports many more potatoes in the processed form, either as frozen french fries or potato chips, the loss of the fresh markets is not likely to have significant economic impacts on the U.S. potato industry. Additionally, the domestic market would likely be able to absorb any excess supply of fresh potatoes resulting from the import bans imposed by other countries. APHIS welcomes public comment on these potential effects.

Description and Estimate of Compliance Requirements

Inspection services required to comply with regulations are provided to producers at no cost during regular business hours. Certificates and limited permits required to move regulated articles out of a quarantine area may be obtained without cost from an inspector or person operating under a compliance agreement.

Significant Alternatives to Rule Which Accomplish the Stated Objectives and Minimize Any Significant Economic Impacts on Small Entities

It is the position of APHIS that there are no alternatives to the interim rule that would satisfactorily accomplish the stated objectives and minimize any significant impacts on small entities. The rule will protect potato producers outside the regulated area from the crop damage and losses that would be incurred if the potato cyst nematode were allowed to spread.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information

collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0322 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS–2006–0143, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. APHIS–2006–0143 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations to quarantine part of the State of Idaho because of the PCN and restrict the interstate movement of regulated articles from the quarantined area. In order to move regulated articles interstate from the quarantined area, regulated parties must obtain certificates or limited permits, and they may enter into compliance agreements with APHIS. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2686 hours per response.

Respondents: Potato producers, packers, processors and handlers.

Estimated annual number of respondents: 400.

Estimated annual number of responses per respondent: 7.65.

Estimated annual number of responses: 3,060.

Estimated total annual burden on respondents: 822 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR parts 301 and 305 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Part 301 is amended by adding a new “Subpart—Potato Cyst Nematode,” §§ 301.86 through 301.86–9, to read as follows:

Subpart—Potato Cyst Nematode

Sec.

301.86 Restrictions on interstate movement of regulated articles.

301.86–1 Definitions.

301.86–2 Regulated articles.

301.86–3 Quarantined areas.

301.86–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

301.86–5 Issuance and cancellation of certificates and limited permits.

301.86–6 Compliance agreements and cancellation.

- 301.86-7 Assembly and inspection of regulated articles.
 301.86-8 Attachment and disposition of certificates and limited permits.
 301.86-9 Costs and charges.

Subpart—Potato Cyst Nematode

§ 301.86 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.¹

§ 301.86-1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

Associated field. A field that has been found to be at risk for infestation with potato cyst nematode in accordance with § 301.86-3(c)(2).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of potato cyst nematode and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.86-4.

Field. A defined production site that is managed separately from surrounding areas for phytosanitary purposes.

Infestation (infested). The presence of the potato cyst nematode or the existence of circumstances that makes it reasonable to believe that the potato cyst nematode is present.

Infested field. A field that has been found to be infested with potato cyst nematode in accordance with § 301.86-3(c)(1).

Inspector. Any employee of APHIS or other person authorized by the

Administrator to perform the duties required under this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.86-5(b) only to a specified destination and only in accordance with specified conditions.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Nursery stock. Living plants and plant parts intended to be planted, to remain planted, or to be replanted.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine. The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Potato cyst nematode. The potato cyst nematode (*Globodera pallida*), in any stage of development.

Quarantined area. Any State or portion of a State designated as a quarantined area in accordance with the provisions in § 301.86-3.

Regulated article. Any article listed in § 301.86-2 or otherwise designated as a regulated article in accordance with § 301.86-2(i).

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.86-2 Regulated articles.

The following are regulated articles:

- (a) Potato cyst nematodes.²
- (b) The following potato cyst nematode host crops:
 Eggplant (*Solanum melongena* L.)
 Pepper (*Capsicum* spp.)
 Potato (*Solanum tuberosum* L.)
 Tomatillo (*Physalis philadelphica*)
 Tomato (*Lycopersicon esculentum* L.)
- (c) Root crops.
- (d) Garden and dry beans (*Phaseolus* spp.) and peas (*Pisum* spp.).
- (e) All nursery stock.
- (f) Soil, compost, humus, muck, peat, and manure, and products on or in which soil is commonly found, including grass sod and plant litter.
- (g) Hay, straw, and fodder.

(h) Any equipment or conveyance used in an infested or associated field that can carry soil if moved out of the field.

(i) Any other product, article, or means of conveyance not listed in paragraphs (a) through (h) of this section that an inspector determines presents a risk of spreading the potato cyst nematode, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.86-3 Quarantined areas.

(a) **Designation of quarantined areas.** In accordance with the criteria listed in paragraph (c) of this section, the Administrator will designate as a quarantined area each field that has been found to be infested with potato cyst nematode, each field that has been found to be associated with an infested field, and any area that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from infested or associated fields. The Administrator will publish the description of the quarantined area on the Plant Protection and Quarantine Web site, http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml. The description of the quarantined area will include the date the description was last updated and a description of the changes that have been made to the quarantined area. The description of the quarantined area may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories. After a change is made to the quarantined area, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined area.

(b) **Designation of an area less than an entire State as a quarantined area.** Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

- (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and
- (2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the potato cyst nematode.

(c) **Criteria for designation of fields as infested fields and associated fields.** (1) **Infested fields.** The Administrator will designate a field as an infested field when a potato cyst nematode is found in the field.

¹ Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (7 U.S.C. 7714).

² Permit and other requirements for the interstate movement of potato cyst nematodes are contained in part 330 of this chapter.

(2) *Associated fields.* The Administrator will designate a field as an associated field when potato cyst nematode host crops, as listed in § 301.86–2(b), have been grown in the field in the last 10 years and

(i) The field shares a border with an infested field; or

(ii) The field came into contact with a regulated article listed in § 301.86–2 from an infested field within the last 10 years; or

(iii) Within the last 10 years, the field shared ownership, tenancy, seed, drainage or runoff, farm machinery, or other elements of shared cultural practices with an infested field that could allow spread of the potato cyst nematode, as determined by the Administrator.

(d) *Removal of fields from quarantine*—(1) *Infested fields.* An infested field will be removed from quarantine when a 3-year biosurvey protocol approved by APHIS has been completed and the field has been found to be free of PCN.

(2) *Associated fields.* An associated field will be removed from quarantine when the field has been found to be free of potato cyst nematode according to a survey protocol approved by the Administrator as sufficient to support removal from quarantine.

(3) *Removal of other areas from quarantine.* If the Administrator has quarantined any area other than infested or associated fields because of its inseparability for quarantine enforcement purposes from infested or associated fields, as provided in paragraph (a) of this section, that area will be removed from quarantine when the relevant infested or associated fields are removed from quarantine.

§ 301.86–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

(a) Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.86–5 and 301.86–8;

(2) Without a certificate or limited permit if:

(i) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(ii) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(A) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(B) The regulated article is moved through the quarantined area without stopping (except for refueling and for traffic conditions such as traffic lights and stop signs); and

(C) The regulated article is not unpacked or unloaded in the quarantined area; and

(D) The article has not been combined or commingled with other articles so as to lose its individual identity.

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article interstate, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infested by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of.

§ 301.86–5 Issuance and cancellation of certificates and limited permits.

(a) *Certificates.* An inspector³ or person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if the inspector determines that the regulated article satisfies the general requirements for a certificate in paragraph (a)(1) of this section and any requirements that may apply to the regulated article under paragraphs (a)(2) through (a)(7) of this section.

(1) *Certification requirements for all regulated articles.* The regulated article must be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)⁴ to prevent the spread of the potato cyst nematode. In addition, the regulated article must be eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(2) *Certification requirements for nursery stock.*—(i) *Potatoes.* Potatoes

³ Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

⁴ Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

intended for use as nursery stock (i.e., seed potatoes) are prohibited from being moved interstate from the quarantined area.

(ii) *Nursery stock of other host crops.* An inspector may issue a certificate for the interstate movement of nursery stock of potato cyst nematode host crops other than potatoes, as listed in § 301.86–2(b), if the nursery stock was grown in a field that meets the following requirements:

(A) The field has been surveyed by an inspector for potato cyst nematode at least once in the last 3 years;

(B) The potato cyst nematode has not been found in the field; and

(C) No more than one potato cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the last 3 years.

(iii) *Nursery stock of non-host crops*—(A) *With soil.* An inspector may issue a certificate for the interstate movement of nursery stock of non-host crops moved with soil if the nursery stock was grown in a field that meets the following requirements:

(1) The field has been surveyed by an inspector for potato cyst nematode at least once in the last 3 years;

(2) The potato cyst nematode has not been found in the field; and

(3) No more than one potato cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the field in the last 3 years.

(B) *Without soil (bare-rooted).* An inspector may issue a certificate for the interstate movement of nursery stock of non-host crops moved without soil if the inspector finds the nursery stock to be free of soil on its roots and on all other parts of the plant.

(3) *Certification requirements for potatoes and root crops for consumption.* An inspector may issue a certificate for the movement of potatoes or root crops intended for consumption from the quarantined area only if the field in which the potatoes or root crops were grown meets the following requirements:

(i) The field has been surveyed by an inspector for PCN at least once in the last 3 years and prior to the planting of the potatoes or root crops;

(ii) PCN has not been found in the field; and

(iii) No more than one PCN host crop has been grown in the field in the last 3 years.

(4) *Certification requirements for soil and associated products.* An inspector may issue a certificate for the interstate movement of a regulated article listed in § 301.86–2(e) only if the article originated in a field that meets the following requirements:

(i) The field has been surveyed by an inspector for potato cyst nematode at least once in the last 3 years;

(ii) The potato cyst nematode has not been found in the field; and

(iii) No more than one potato cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the last 3 years.

(5) *Certification requirements for hay, straw, and fodder.* An inspector may issue a certificate for the movement of hay, straw, or fodder from the quarantined area only if:

(i) The field where the hay, straw, or fodder was produced meets the following requirements:

(A) The field has been surveyed by an inspector for potato cyst nematode at least once in the last 3 years;

(B) The potato cyst nematode has not been found in the field; and

(C) No more than one potato cyst nematode host crop, as listed in § 301.86–2(b), has been grown in the field in the last 3 years; or

(ii) The hay, straw, or fodder is produced according to procedures judged by an inspector to be sufficient to isolate it from soil throughout its production.

(6) *Certification requirements for equipment used in infested or associated fields.* An inspector may issue a certificate for the interstate movement of equipment that has been used in an infested or associated field and that can carry soil if moved out of the field only after the equipment has been pressure-washed under the supervision of an inspector to remove all soil or steam-treated in accordance with part 305 of this chapter.

(b) *Limited permits—(1) General conditions.* An inspector⁵ may issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(i) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the potato cyst nematode because life stages of the potato cyst nematode will be destroyed by the specified handling, processing, or utilization;

(ii) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the potato cyst nematode; and

(iii) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(2) *Specific conditions for potatoes for consumption.* An inspector may issue a limited permit to allow the interstate movement of potatoes from the quarantined area for processing or packing only if:

(i) The potatoes are transported in a manner that prevents the potatoes and soil attached to the potatoes from coming into contact with agricultural premises outside the quarantined area; and

(ii) The potatoes are processed or packed at facilities that handle potatoes, waste, and waste water in a manner approved by APHIS to prevent the spread of potato cyst nematode.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all provisions in this subpart for the use of the certificate or limited permit or has not complied with all the conditions contained in the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of

practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0322)

§ 301.86–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.⁶

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with any of the provisions of this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.86–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.86–5(c)) who desires a certificate or limited permit to move a regulated article interstate must notify an inspector⁷ as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

⁶ Compliance agreement forms are available without charge from local Plant Protection and Quarantine offices, which are listed in telephone directories.

⁷ See footnote 3 to § 301.86–5(a).

⁵ See footnote 3 to § 301.86–5(a).

§ 301.86–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a

regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579–0322)

§ 301.86–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. APHIS will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

PART 305—PHYTOSANITARY TREATMENTS

■ 3. The authority citation for 7 CFR part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 4. In § 305.2, in the table in paragraph (g), the entries for “Automobiles” and “Construction equipment without cabs”; the first entry for “Used farm equipment with cabs”; and the entries for “Used farm equipment without cabs” and “Used containers” are revised to read as follows:

§ 305.2 Approved treatments.

* * * * *
(g) * * *

Article	Pest	Treatment
Automobiles	<i>Globodera rostochiensis</i> and <i>G. pallida</i> .	T406–c, steam cleaning: Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated.
Construction equipment without cabs.	<i>G. rostochiensis</i> and <i>G. pallida</i>	SS T–406d.
Used farm equipment with cabs	<i>G. rostochiensis</i> and <i>G. pallida</i>	T406–c, steam cleaning: Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated.
Used farm equipment without cabs	<i>G. rostochiensis</i> and <i>G. pallida</i>	SS T–406d.
Used containers	<i>G. rostochiensis</i> and <i>G. pallida</i>	SS T–406d.

* * * * *
Done in Washington, DC, this 5th day of September 2007.
Kevin Shea,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. E7–17842 Filed 9–11–07; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 770

RIN 0560–AG87

Indian Tribal Land Acquisition Program Loan Writedowns

AGENCY: Farm Service Agency, USDA.
ACTION: Final rule.

SUMMARY: This rule revises the Farm Service Agency (FSA) Indian Tribal Land Acquisition Program (ITLAP) regulations as required by the Native American Technical Corrections Act of 2006. The regulations pertaining to rental value write-down of ITLAP loans

will not require a market value rent study where the land is actually rented. The actual rents received shall be used to determine the rental value of the property for write-down purposes.

DATES: *Effective Date:* October 12, 2007.

FOR FURTHER INFORMATION CONTACT: Mel Thompson, Senior Loan Officer, Farm Service Agency; telephone: 202–720–7862; Facsimile: 202–690–1196; E-mail: mel_thompson@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Discussion of the Final Rule

This rule revises the write-down servicing regulations of the Farm Service Agency's (FSA) Indian Tribal Land Acquisition Loan Program (ITLAP) to comply with section 203 of the Native American Technical Corrections Act of 2006, Public Law 109–221 (25 U.S.C. 494a) (“NATCA”).

A. Background

ITLAP loans assist Native American tribes or tribal corporations with the acquisition of land interests within the tribal reservation or in an Alaskan community as set out in 7 CFR part 770. Loan funds may be used to acquire land, land interests and appurtenances which will be used for the benefit of the tribe or its members, pay costs for loan closing, and refinance non-USDA debts the applicant incurred to purchase the land in certain situations. During the life of the ITLAP loan the borrower has a number of servicing options available based on changes in their loan status. The servicing options available depend on each borrower's circumstances and can include reamortization, consolidation, interest rate reduction, deferral, land exchanges, debt writedown, release of reserve accounts, or a combination thereof.

B. Writedown Requirements

Under 7 CFR 770.10(e) the Agency may reduce the unpaid principal and interest on an ITLAP loan based, in part, on the land sale value or rental value of

the ITLAP property. The option used is as requested by the borrower or, if it requests both, the write-down is based on which option provides the greatest debt reduction. To be eligible for either writedown option the borrower must be in a persistent poverty county, have a per capita income for individual enrolled tribal members of less than 50 percent of the Federal poverty income rate, and have a tribal unemployment rate in excess of 50 percent.

In a rental value write-down, FSA reduces the unpaid principal and interest on the loan approved for the writedown so that the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased with the loan. The rental value writedown option was provided along with a few other changes to ITLAP regulations in a final rule published on February 11, 2005 (70 FR 7165). For determining the value of the property, that rule replaced the requirement for a full appraisal (i.e., combining comparable sales, income, and cost approaches) with a requirement for a study of the rental income of properties similar to and near the land purchased with ITLAP funds. See 7 CFR 770.2 and 770.10(e)(4).

C. Changes Required by the NATCA

Section 203 of the NATCA (effective May 12, 2006) provides:

Notwithstanding any other provision of law, any actual rental proceeds from the lease of land acquired under * * * [ITLAP program authority] (25 U.S.C. 488) certified by the Secretary of the Interior shall be deemed—

- (1) To constitute the rental value of that land; and
- (2) To satisfy the requirement for appraisal of that land.

Thus, this rule amends the definition of “rental value”, as it pertains to ITLAP, to provide that actual rents received will be used to determine the average rental value and the amount of write-down, rather than market rent, in accordance with the statute. Five years of data will be requested and yield the most reliable average, but the Agency will accept fewer years data if that is all that is available. If no actual rents have been received, then the borrower must provide a 5-year market value rent study. The economic and other effects of this change are difficult to estimate; however, it likely will reduce the borrower’s costs, eliminate the time required to complete an appraisal, and reduce FSA’s application processing time. On the other hand, the administrative costs to the Government will likely increase due to the change in

calculating the amount of debt to be forgiven by rental value write-down.

D. Summary of Economic Impacts

Under the new write-down rules required under Section 203 of the NATCA, ITLAP borrowers will be able to use a 5-year average of actual rental income received on the land purchased with the ITLAP loan to determine any write-down amount requested. This provision increases the likelihood that principal and accrued interest write-downs will occur in the program and that higher ITLAP loan subsidy rates will follow. FSA estimates that a total of 3 current ITLAP borrowers will meet the new write-down criteria and the estimated costs of this rule are based upon the assumption that all 3 borrowers are likely to take advantage of the lower standards imposed by NATCA. These 3 borrowers owe approximately \$20 million on loans that originally totaled \$31 million. FSA estimates the taxpayer costs will increase by as much as \$5 million as a result of write-downs to these 3 borrowers. Furthermore, future taxpayer costs are expected to increase slightly as a result of higher subsidy costs resulting from higher loan losses.

Notice and Comment

The notice and comment provisions of 5 U.S.C. 553 and the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking, provide that certain rules may go forward without public notice and comment when they are in the public interest. This regulation adopts changes mandated in the NATCA Section 203. Accordingly, this rule is published without requesting public comment and will be effective 30 days after publication in the **Federal Register**.

Executive Order 12866

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

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, the Agency has determined that there will be no significant economic impact on a substantial number of small entities. There are currently 24 ITLAP borrowers with 105 loans totaling \$52 million. However, only about four are likely to be affected by this rule. The RFA requires agencies to consider the impact of their regulatory proposals on small

entities, minimize small entity impacts, and provide their analyses for public comment. This rule affects Indian Tribes, and such Tribes are not small businesses as defined by and subject to the Regulatory Flexibility Act. Nevertheless, this rule provides a substantial reduction in cost to Tribes applying for debt write-down. Thus, to the extent an Indian Tribe may be affected by this rule, there are no negative impacts.

Environmental Evaluation

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 1940, subpart G. FSA has determined that this rule will not have a significant impact on the human or natural environment and therefore requires no further environmental review.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before requesting judicial review.

Executive Order 12372

As stated in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule do not require consultation with state and local officials under the scope of Executive Order 12372.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector of expenditures of \$100 million or more in any one year. This rule contains no Federal mandates, as defined by title II of the UMRA; therefore, this rule is not subject to sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the

national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments.

Paperwork Reduction Act

The information collections were previously approved under OMB control number 0560-0198, but the package was retired since there are less than ten respondents annually and the collections are, therefore, not subject to the Paperwork Burden Act. The number of estimated annual respondents is not increased by this rule.

Federal Assistance Program

The changes affect the following program listed in the Catalog of Federal Domestic Assistance: 10.421—Indian Tribes and Tribal Corporation Loans.

List of Subjects in 7 CFR Part 770

Agriculture, Credit, Indians, Rural areas, Loan programs.

■ Accordingly, for the reasons stated in the preamble, 7 CFR part 770 is amended as follows:

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

■ 1. The authority citation for part 770 is revised to read as follows:

Authority: 5 U.S.C. 301, 25 U.S.C. 488.

■ 2. Amend § 770.2 by revising the definition of “rental value” in paragraph (b) to read as follows:

§ 770.2 Abbreviations and definitions.

* * * * *

(b) * * *

Rental value for the purpose of rental value write-downs, equals the average actual rental proceeds received from the lease of land acquired under ITLAP. If there are no rental proceeds, then rental value will be based on market data according to § 770.10(e)(4).

* * * * *

■ 3. Amend § 770.10 by revising paragraph (e)(4)(iii) to read as follows:

§ 770.10 Servicing.

* * * * *

(e) * * *

(4) * * *

(iii) The borrower provides a record of any actual rents received for the land for the preceding 5 years, which will be used to calculate the average rental value. This record must be certified by the Department of the Interior. For land that has not been leased or has not received any rental income, the borrower must provide a market value rent study report for the preceding 5

years, which identifies the average annual rental value based on the market data. The market value rent study report must be prepared by a certified general appraiser and meet the requirements of USPAP.

* * * * *

Signed in Washington, DC, on September 6, 2007.

Teresa C. Lasseter,
Administrator, Farm Service Agency.
 [FR Doc. E7-18032 Filed 9-11-07; 8:45 am]
BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. AMS-FV-07-0051; FV07-981-2 FR]

Almonds Grown in California; Change in Requirements for Interhandler Transfers of Almonds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the requirements for interhandler transfers of almonds under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule requires handlers who transfer almonds to other handlers to report to the Board whether or not the almonds were treated to achieve a 4-log reduction in *Salmonella* bacteria (*Salmonella*). This action will help the Board track treated and untreated almonds and facilitate administration of its mandatory *Salmonella* treatment program.

DATES: *Effective Date:* September 13, 2007.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Assistant Regional Manager, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Maureen.Pello@usda.gov, or Kurt.Kimmel@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington,

DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.”

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

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

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

This final rule revises the requirements for interhandler transfers of almonds under the administrative rules and regulations of the order. This rule require handlers who transfer almonds to other handlers to report to the Board whether or not the almonds were treated to achieve a 4-log reduction in *Salmonella*. A mandatory treatment program to reduce the potential for *Salmonella* in almonds took effect in September 2007. This action will enable the Board to track treated and untreated almonds and help facilitate administration of its mandatory treatment program. This action was unanimously recommended by the Board at a meeting on March 28, 2007.

Section 981.55 of the order provides authority for handlers to, upon notice to and under supervision of the Board,

transfer almonds to another handler. Marketing order obligations regarding volume regulation, when in effect, and assessments must be fully met and may be divided between the participating handlers. Section 981.455 requires handlers to report to the Board on ABC Form No. 7, "Interhandler Transfer of Almonds," information regarding interhandler transfers. Paragraph (a) of that section currently requires the following information: (1) Date of transfer; (2) the names and plant locations of both the transferring and receiving handlers; (3) the variety of almonds transferred; (4) whether the almonds are shelled or unshelled; and (5) the name of the handler assuming reserve and assessment obligations on the almonds transferred.

In August 2006, the Board recommended a mandatory treatment program to reduce the potential for *Salmonella* in almonds. USDA engaged in informal rulemaking to implement the program. A final rule was published on March 30, 2007 (61 FR 15021). Beginning in September 2007, handlers must subject their almonds to a process that achieves a 4-log reduction in *Salmonella* prior to shipment. The program exempts untreated almonds that are shipped to manufacturers in the U.S., Canada, and Mexico who agree to treat the almonds and untreated almonds that are shipped outside the U.S., Canada, and Mexico.

To help track treated and untreated almonds, the Board met in March 2007 and recommended revising the order's administrative rules and regulations to require handlers to report to the Board whether or not almonds transferred to other handlers were treated under the mandatory treatment program. Handlers must include an identification number for each lot transferred. This number may be a contract number or other unique handler number that can identify the lot. Under the mandatory *Salmonella* treatment program, handler records must provide the ability to differentiate treated from untreated almonds (§ 981.442(b)(5)). Requiring handlers to provide lot identification numbers on their interhandler transfer forms complements this requirement. These changes to the interhandler transfer requirements will help facilitate administration of the mandatory *Salmonella* treatment program. Paragraph (a) in § 981.455 is revised accordingly.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of

this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 6,000 producers of almonds in the production area and approximately 110 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000.

Data for the most recently completed crop year indicate that about 52 percent of the handlers shipped under \$6,500,000 worth of almonds. Dividing the average almond crop values for 2003-04, 2004-05, and 2005-06 as reported by the National Agricultural Statistics Service (\$2.105 billion) by the number of producers (6,000) yields an average annual producer revenue estimate of about \$350,000. Based on the foregoing, about half of the handlers and a majority of almond producers may be classified as small entities.

This rule revises § 981.455(a) of the order's administrative rules and regulations to require handlers who transfer almonds to other handlers to report to the Board whether or not the almonds were treated to achieve a 4-log reduction in *Salmonella*. A mandatory treatment program to reduce the potential for *Salmonella* in almonds took effect in September 2007. This action will help the Board track treated and untreated almonds and help ensure the integrity of its mandatory program. Authority for this change is provided in §§ 981.55 of the order.

Regarding the impact of this action on affected entities, it merely requires handlers who transfer almonds to other handlers to indicate on ABC Form No. 7, "Interhandler Transfer of Almonds," whether or not the almonds were treated to achieve a 4-log reduction in *Salmonella*. Handlers must also include a lot identification number for each lot transferred.

Regarding alternatives to this action, the Board considered not requiring handlers to report whether their transferred almonds were treated to

achieve a 4-log reduction in *Salmonella*. However, this would not allow the Board to track treated and untreated almonds. Thus, the Board unanimously recommended revising the requirements regarding interhandler transfers of almonds.

This action slightly modifies the reporting requirements for all California almond handlers. All handlers must currently report their interhandler transfers to the Board on ABC Form No. 7, "Interhandler Transfer of Almonds." This form had been approved by the Office of Management and Budget (OMB) under OMB No. 0581-0178, Vegetable and Specialty Crops. This rule requires that two extra columns be added to this form. One column allows handlers to indicate whether or not the transferred almonds were treated to achieve a 4-log reduction in *Salmonella*. The second column provides for inclusion of a lot identification number for tracking purposes. In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the revised form has been submitted to the OMB for approval. Once approved, this information collection will be merged into OMB No. 0581-0178. It is estimated that it will take a handler about 0.5 hour per response, and that 50 handlers will respond and submit the form five times per year. Thus, the total annual reporting burden for the form is estimated at 125 hours per year.

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

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by the industry and public sector agencies.

Additionally, the meetings were widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. The Board's Food Quality and Safety Committee discussed this issue on January 30, 2007. The committee recommended the change to the Board on March 28, 2007. Both of these meetings were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on June 8, 2007 (72 FR 31759).

Copies of the rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending August 7, 2007, was provided for interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter asked if the same rules and safeguards apply to almonds imported from other countries. Almonds are not listed in section 8e of Act. Thus, imported almonds are not subject to comparable quality requirements as those in effect for the domestic commodity.

Accordingly, no changes will be made to the rule as proposed, based on the comment received.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because mandatory compliance with the *Salmonella* treatment program began September 1, 2007, and this rule should be in place as soon as possible so the Board can track treated and untreated almonds. Further, handlers are aware of this action, which was unanimously recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule, and the comment received was addressed herein.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 981.455 is amended by revising paragraph (a) to read as follows:

§ 981.455 Interhandler transfers.

(a) *Transfers of almonds.* Interhandler transfers of almonds pursuant to § 981.55 shall be reported to the Board on ABC Form 7. The report shall contain the following information:

- (1) Date of transfer;
- (2) The names, and plant locations of both the transferring and receiving handlers;
- (3) The variety of almonds transferred;
- (4) Whether the almonds are shelled or unshelled;
- (5) The name of the handler assuming reserve and assessment obligations on the almonds transferred;
- (6) Whether the almonds had been treated to achieve a 4-log reduction in *Salmonella* bacteria, pursuant to § 981.442(b); and
- (7) A unique handler identification number for each lot.

* * * * *

Dated: September 7, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–4490 Filed 9–10–07; 10:05 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE266; Special Conditions No. 23–206–SC]

Special Conditions: Malibu Power & Propeller Int'l, LLC, Piper Models PA–46–310P and PA–46–350P; Installation of a Full Authority Digital Engine Control (FADEC) Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Malibu Power & Propeller Int'l, LLC modified Piper Model PA–46–310P and PA–46–350P airplanes. The airplanes, as modified by Malibu Power & Propeller Int'l, LLC, will have a novel or unusual design feature(s) associated with the installation of a full authority digital engine control (FADEC) engine.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 5, 2007. We must receive your comments by October 12, 2007.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, Attn: Rules Docket No. CE266, 901 Locust, Kansas City, MO 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE266. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–4135; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m.,

Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 11, 2003, Malibu Power & Propeller Int'l, LLC applied for a supplemental type certificate for the Piper Models PA-46-310P and PA-46-350P to install a full authority digital engine control in the Piper Models PA-46-310P and PA-46-350P. The Piper Models PA-46-310P and PA-46-350P, currently approved under Type Certificate No. A25SO, are six-place, pressurized, turbocharged, single-engine airplanes. Malibu Power & Propeller Int'l, LLC plans to use an electronic engine control instead of a traditional mechanical control system on the Piper Model PA-46-310P (Malibu) and PA-46-350P (Malibu Mirage) airplane. The electronic engine control system performs critical functions, such as the control of the ignition and fuel injection functions, throughout the operational envelope.

Type Certification Basis

Under the provisions of § 21.101, Malibu Power & Propeller Int'l, LLC must show that the Piper Models PA-46-310P and PA-46-350P, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A25SO, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A25SO are as follows:

PA-46-310P and PA-46-350P:
14 CFR part 23, effective February 1, 1965, as amended by Amendment 23-25, effective March 6, 1980; 14 CFR part 25, § 25.783(e) as amended by Amendment 25-54, effective October 14, 1980; § 25.831(c) and (d) as amended by Amendment 25-41, effective September 1, 1977; and 14 CFR part 36, Appendix F

through Amendment 36-15, effective May 6, 1988, when equipped with 2 blade propeller or part 36, Appendix G through Amendment 36-16, effective December 18, 1988, when equipped with optional 3 blade propeller.

No equivalent safety findings.

Special Conditions No. 23-ACE-53, Docket No. 082CE.

For PA-46-350P aircraft equipped with Piper factory installed Avidyne Entegra system (See Piper Report VB-1954), the additional certification basis for installation specific items only is: 14 CFR part 23, § 23.1529 as amended by Amendment 23-26, effective 14 October 1980; § 23.1523 as amended by Amendment 23-34, effective 17 February 1987; §§ 23.1322, 23.1331, 23.1357(a)(2), (b), (c), and (d) as amended by Amendment 23-43, effective 10 May 1993; §§ 23.305, 23.613, 23.773(a)(2), 23.1525, 23.1549(a) as amended by Amendment 23-45, effective 7 September 1993; §§ 23.301, 23.337(a)(1) and (b)(1), 23.341(a), 23.473, 23.561(b)(3) and (e), 23.571(a), 23.607, 23.611, as amended by Amendment 23-48, effective 11 March 1996; § 23.1303(a), (b), and (f), §§ 23.1307, 23.1309(a), (a)(1), (a)(2), (b), and (e), 23.1311(a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (b), and (c), 23.1321(a), (c), (d), and (e), 23.1323(a) and (c), 23.1329, 23.1351(a)(1), (a)(2)(i), (b)(2), and (b)(3), 23.1353(d) and (h), 23.1359(c), 23.1365(a), (b), (d), (e), and (f), 23.1431(a) and (b) as amended by Amendment 23-49, effective 11 March 1996; § 23.1325(a), (b)(1), (b)(2)(ii), (b)(3), (c), and (e), 23.1543(b) and (c), 23.1545(a), (b)(3), (b)(4), and (c), 23.1555(a) and (b), 23.1563, 23.1581(a), (b)(2), (b)(3), and (f), 23.1583(m), 23.1585(j) as amended by Amendment 23-50, effective 11 March 1996; § 23.777(a) and (b), 23.1337 as amended by Amendment 23-51, effective 11 March 1996; § 23.1305(a)(1), (a)(2), (a)(3), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6)(i) as amended by Amendment 23-52, effective 25 July 1996; Special Condition for HIRF (Docket No. CE215, Special Condition 23-154-SC), January 7, 2005.

Eligible Serial Numbers: 4636375 and up.

Discussion

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23, § 23.1309) do not contain adequate or appropriate safety standards for the Piper Models PA-46-310P and PA-46-350P because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Piper Models PA-46-310P and PA-46-350P must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as appropriate, as defined in § 11.19, as required by § 11.38 and they become part of the type certification basis under § 21.101.

The Malibu Power & Propeller Int'l, LLC modified Piper Model PA-46-310P and PA-46-350P airplanes will incorporate a novel or unusual design feature, an engine that includes a digital electronic engine control system with FADEC capability. The control system will be certificated as part of the engine. However, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)).

Electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (e.g., automated cockpit powerplant controls such as mixture setting). The parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309. However, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. Section 23.1309(f)(1) prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Malibu Power & Propeller Int'l, LLC modified Piper Model PA-46-310P and PA-46-350P airplanes to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23-49.

Novel or Unusual Design Features

The Malibu Power & Propeller Int'l, LLC modified Piper Models PA-46-310P and PA-46-350P will incorporate the following novel or unusual design features: The Malibu Power & Propeller Int'l, LLC modified Piper Models PA-46-310P and PA-46-350P will incorporate a digital electronic engine control system.

Applicability

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type

certification basis for the Malibu Power & Propeller Int'l, LLC modified Piper Model PA-46-310P and PA-46-350P airplanes.

The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23-49. The intent of this requirement is not to reevaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement; however, the effects of the installation on this data must be addressed.

Issued in Kansas City, Missouri on September 5, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-18013 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-28351; Directorate Identifier 2007-NM-074-AD; Amendment 39-15192; AD 2007-19-02]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11, MD-11F, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, and MD-10-30F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model MD-11, MD-11F, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, and MD-10-30F airplanes. This AD requires measuring the electrical resistance of the bond between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump housing flange, and performing corrective and other specified actions as applicable. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent inadequate bonding between the No. 2 fuel transfer pump adapter surface of

the fuel tank and the fuel transfer pump housing flange. Inadequate bonding could result in a potential ignition source inside the fuel tank if the fuel transfer pump and structure interface are not submerged in fuel, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective October 17, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 17, 2007.

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5254; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model MD-11, MD-11F, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, and MD-10-30F airplanes. That NPRM was published in the **Federal Register** on June 5, 2007 (72 FR 31003). That NPRM proposed to require measuring the electrical resistance of the bond between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump

housing flange, and performing corrective and other specified actions as applicable.

Comments

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

Conclusion

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

Costs of Compliance

There are about 573 airplanes of the affected design in the worldwide fleet. This AD affects about 399 airplanes of U.S. registry. The required measurement takes about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is \$31,920, or \$80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007-19-02 McDonnell Douglas:
Amendment 39-15192. Docket No. FAA-2007-28351; Directorate Identifier 2007-NM-074-AD.

Effective Date

(a) This AD becomes effective October 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD-11, MD-11F, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, and MD-10-30F airplanes, certificated in any category; as identified in Boeing Service Bulletins DC10-28-250 and MD11-28-129, both dated July 26, 2006.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent inadequate bonding between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump housing flange. Inadequate bonding could result in a potential ignition source inside the fuel tank if the fuel transfer pump and structure interface are not submerged in fuel, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Measure Electrical Resistance/Corrective & Other Specified Actions

(f) Within 60 months after the effective date of this AD: Measure the electrical resistance of the bond between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump housing flange in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10-28-250 or MD11-28-129, both dated July 26, 2006, as applicable.

(1) If the resistance measurement is 2.5 milliohms or less: No further action is required by this paragraph.

(2) If the resistance measurement is more than 2.5 milliohms: Before further flight, electrically bond the fuel tank No. 2 fuel transfer pump housing surfaces in accordance with the service bulletin.

(3) Before further flight thereafter, do an electrical resistance bonding test to verify the electrical resistance between the fuel transfer pump housing and the structure is 2.5 milliohms maximum. If that electrical resistance is not achieved, rework the electrical bond until the electrical resistance is achieved. Do the actions in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(h) You must use Boeing Service Bulletin DC10-28-250, dated July 26, 2006; or Boeing Service Bulletin MD11-28-129, dated July 26, 2006; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on August 31, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-17829 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-27865 Directorate Identifier 2007-CE-039-AD; Amendment 39-15191; AD 2007-19-01]

RIN 2120-AA64

Airworthiness Directives; Pacific Aerospace Corporation, Ltd. Model 750XL Airplanes

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

ACTION: Final rule.

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

To prevent the cockpit door windows separating from their frames, * * * We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 17, 2007.

On October 17, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 9, 2007 (72 FR 37124). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

To prevent the cockpit door windows separating from their frames, * * * The MCAI requires you to inspect the windscreen and cockpit door windows for signs of disbonding of the adhesive between the transparency and the composite window frame. If disbonding is evident, you must do the required modification.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 40 work-hours per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$50 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$22,750 or \$3,250 per product.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007-19-01 Pacific Aerospace Corporation, Ltd: Amendment 39-15191; Docket No. FAA-2007-27865; Directorate Identifier 2007-CE-039-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 750XL airplanes, all serial numbers, certificated in any category, that have not incorporated Pacific Aerospace Limited Service Letter PACSL/XL/07-1, dated April 18, 2007, with Pacific Aerospace LTD Drawing, 11-03129, Issue B or subsequent, in its entirety.

Subject

(d) Air Transport Association of America (ATA) Code 56: Windows.

Reason

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

To prevent the cockpit door windows separating from their frames, * * * The MCAI requires you to inspect the windscreen and cockpit door windows for signs of disbonding of the adhesive between the transparency and the composite window frame. If disbonding is evident, you must do the required modification.

Actions and Compliance

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

(1) Within the next 50 hours time-in-service (TIS) after October 17, 2007 (the effective date of this AD) and thereafter at intervals not to exceed 50 hours TIS, inspect the windscreen and cockpit door windows for signs of disbonding of the adhesive between the transparency and the composite window frame following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276) and PAC Drawing No. 11-03137, both dated February 20, 2007 (undated). If you find disbanding during any inspection required by this AD, before further flight, modify the windscreen and cockpit windows to incorporate mechanical fasteners following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276) and PAC Drawing No. 11-03137 both dated February 20, 2007.

(2) Within the next 150 hours TIS after October 17, 2007 (the effective date of this AD) or within the next 6 months after October 17, 2007 (the effective date of this AD), whichever occurs first, modify the

windscreen and cockpit windows to incorporate mechanical fasteners following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276) and PAC Drawing No. 11-03137 both dated February 20, 2007. The requirement of paragraph (f)(1) of this AD to do repetitive inspections is no longer necessary when the modification of paragraph (f)(2) of this AD is done.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/750XL/10, dated March 29, 2007; Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276) and PAC Drawing No. 11-03137 both dated February 20, 2007; and Pacific Aerospace Limited Service Letter PACSL/XL/07-1, dated April 18, 2007, with Pacific Aerospace LTD Drawing, 11-03129, Issue B or subsequent, for related information.

Material Incorporated by Reference

(i) You must use Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276) and PAC Drawing No. 11-03137 both dated February 20, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag, 3027 Hamilton, New Zealand; telephone: +64 7-843-6144; facsimile: +64 7-843-6134.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on September 4, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-17828 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2006-26043; Directorate Identifier 2005-NM-010-AD; Amendment 39-15193; AD 2007-19-03]

RIN 2120-AA64**Airworthiness Directives; McDonnell Douglas Model 717-200 Airplanes**

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all McDonnell Douglas Model 717-200 airplanes. This AD requires inspecting the power conversion distribution unit (PCDU) to determine its part number, and modifying certain PCDUs. This AD results from reports of failed PCDUs, the loss of an electrical bus, and the presence of a strong electrical burning odor in the flight deck and forward cabin. We are issuing this AD to prevent the loss of an electrical bus due to PCDU failure, resulting in the loss of all flight displays for an unacceptable time period, and consequent emergency landing.

DATES: This AD becomes effective October 17, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 17, 2007.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building

Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Thomas Phan, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5342; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Operations office

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all McDonnell Douglas Model 717-200 airplanes. That supplemental NPRM was published in the **Federal Register** on June 6, 2007 (72 FR 31206). That supplemental NPRM proposed to require inspecting the power conversion distribution unit (PCDU) to determine its part number, and modifying certain PCDUs. That supplemental NPRM also proposed to re-identify the part number reference for the proposed corrective action.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Costs of Compliance

There are about 137 airplanes of the affected design in the worldwide fleet, of which about 108 airplanes are U.S. registered. The following tables provide the estimated costs for U.S. operators to comply with this AD. The total fleet cost could be as high as \$434,592.

ESTIMATED COSTS FOR PRIMARY ACTIONS

Primary actions	Work hours	Labor rate per hour	Parts cost	Cost per airplane
Part number identification	1	\$80	\$0	\$80
Modification (Boeing Alert Service Bulletin 717-24A0028)	12	80	0	960

ESTIMATED COSTS FOR CONCURRENT ACTIONS

Hamilton Sundstrand Service Bulletin	Work hours	Labor rate per hour	Parts cost	Cost per airplane
40EGS22P-24-3	6	\$80	\$154, per airplane	\$634.
40EGS22P-24-4	3	80	0	240.
40EGS22P-24-6	3	80	0	240.
40EGS22P-24-7	1 per PCDU, maximum 3 PCDUs per airplane.	80	10 per PCDU, maximum 3 PCDUs per airplane.	270 (maximum).
40EGS22P-24-8	10	80	0	800.
40EGS22P-24-9	10	80	0	800.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007-19-03 McDonnell Douglas: Amendment 39-15193. Docket No. FAA-2006-26043; Directorate Identifier 2005-NM-010-AD.

Effective Date

(a) This AD becomes effective October 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model 717-200 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of failed power conversion distribution units (PCDUs), the loss of an electrical bus, and the presence of a strong electrical burning odor in the flight deck and forward cabin. We are issuing this AD to prevent the loss of an electrical bus due to PCPU failure, resulting in the loss of all flight displays for an unacceptable time period, and consequent emergency landing.

Compliance

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

Identification of PCPU Part Number

(f) Within 20 months after the effective date of this AD, inspect the PCPU to determine its part number. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review.

(1) If the part number is below 762904E, do the actions specified in paragraphs (g) and (h) of this AD.

(2) If the part number is 762904E or higher, no further work is required by this AD.

Modification

(g) Within 20 months after the effective date of this AD, modify the PCPU in accordance with Boeing Alert Service Bulletin 717-24A0028, Revision 1, dated December 20, 2005. A modification done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 717-24A0028, dated November 24, 2004, is acceptable for compliance with the requirements of this paragraph.

Note 1: Boeing Alert Service Bulletin 717-24A0028 refers to Hamilton Sundstrand Service Bulletin 40EGS22P-24-10, Revision 1, dated May 11, 2005, as an additional source of service information for the modification.

Concurrent Requirements

(h) Before or concurrently with the modification required by paragraph (g) of this AD, do the applicable actions specified in Table 1 of this AD.

TABLE 1.—CONCURRENT REQUIREMENTS

Do the following—	In accordance with Hamilton Sundstrand Service Bulletin—
Rework the transformer rectifier unit assembly (TRU)	40EGS22P-24-3, dated June 30, 2000.
Rework the W3 wiring harness assembly to install direct lead wires to the TRU	
Add a ground wire to the TRU transformer	
Add an insulated spacer to the PCPU top cover	
Install new PCPU 186 firmware	40EGS22P-24-4, Revision 1, dated January 2, 2002.
Install new PCPU 186 firmware	40EGS22P-24-6, dated July 25, 2002.
Modify the top cover of the PCPU	40EGS22P-24-7, dated September 3, 2003.
Modify printed wiring board (PWB) assemblies A4 and A5	40EGS22P-24-8, dated September 4, 2003.
Check and apply torque seal to fasteners on the TRU assembly and to PCPU internal fasteners, as applicable	
Modify PWB assembly A4	40EGS22P-24-9, dated November 19, 2003.

Credit for Accomplishment of Earlier Service Bulletin

(i) Installation of new PCPU 186 firmware before the effective date of this AD in accordance with Hamilton Sundstrand Service Bulletin 40EGS22P-24-4, dated April 26, 2001, is acceptable for compliance with the corresponding requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on

any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(k) You must use the service documents identified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Boeing Alert Service Bulletin 717-24A0028	1	December 20, 2005.
Hamilton Sundstrand Service Bulletin 40EGS22P-24-3	Original	June 30, 2000.
Hamilton Sundstrand Service Bulletin 40EGS22P-24-4	1	January 2, 2002.
Hamilton Sundstrand Service Bulletin 40EGS22P-24-6	Original	July 25, 2002.
Hamilton Sundstrand Service Bulletin 40EGS22P-24-7	Original	September 3, 2003.
Hamilton Sundstrand Service Bulletin 40EGS22P-24-8	Original	September 4, 2003.
Hamilton Sundstrand Service Bulletin 40EGS22P-24-9	Original	November 19, 2003.

Hamilton Sundstrand Service Bulletin 40EGS22P-24-4, Revision 1, dated January 2, 2002, has the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 3, 4, 5, 6, 7, 8	1	January 2, 2002.
2	Original	April 26, 2001.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on September 4, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-17844 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 745, 772, and 774

[Docket No. 070705267-7492-01]

RIN 0694-AE08

Implementation of the Understandings Reached at the June 2007 Australia Group (AG) Plenary Meeting; Addition to the List of States Parties to the Chemical Weapons Convention (CWC)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) to implement the understandings reached at the June 2007 plenary meeting of the Australia Group (AG). This final rule amends the EAR to reflect changes to the AG “Control List of Biological Agents” that the countries participating in the AG adopted at the plenary meeting. Specifically, this rule revises the Commerce Control List (CCL) entry that controls animal pathogens on the

AG “Control List of Biological Agents” by revising the listing for mycoplasma mycoides to include only the specific subspecies and strains of mycoplasma mycoides that are of most concern as the causative agents of disease in animals, i.e., *Mycoplasma mycoides* subspecies *mycoides* SC (small colony) and *Mycoplasma capricolum* subspecies *capripneumoniae* (“strain F38”). In addition, this rule makes conforming changes to the CCL entry that controls certain select agents not included on any of the AG Common Control Lists.

This rule also amends the EAR to reflect the admission of Croatia to the Australia Group and updates the definition of “Australia Group” in the EAR by adding Croatia to the list of participating countries.

In addition to the AG plenary meeting changes described above, this rule amends the EAR by revising the CCL entry that controls certain equipment capable of being used in handling biological materials. This rule revises a Technical Note in the CCL entry by updating the edition of the World Health Organization (WHO) “Laboratory Biosafety Manual” referenced therein to identify the current edition of the manual. This WHO manual contains safety requirements for P3 or P4 (BL3, BL4, L3, L4) complete containment facilities.

Finally, this rule amends the list of countries that currently are States Parties to the Chemical Weapons Convention (CWC) by adding “Barbados,” which recently became a State Party. As a result of this change, the CW (Chemical Weapons) license requirements and policies in the EAR that apply to Barbados now conform with those applicable to other CWC States Parties. This rule also clarifies the scope of the entry for “China” on the list of CWC States Parties by revising the footnote to this entry to indicate that, for CWC purposes only, China includes “Macau,” as well as “Hong Kong.”

DATES: This rule is effective September 12, 2007. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694-AE08, by any of the following methods:

- **E-mail:** publiccomments@bis.doc.gov. Include “RIN 0694-AE08” in the subject line of the message.
- **Fax:** (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.
- **Mail or Hand Delivery/Courier:** Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694-AE08.

Send comments regarding this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments on this collection of information should be submitted separately from comments on the final rule (i.e., RIN 0694-AE08)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott, Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-3343.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the annual plenary meeting of the Australia Group (AG) that was held in Paris on June 4-7, 2007. The Australia Group is a multilateral forum, consisting of 40 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically

reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The understandings reached at the June 2007 annual plenary meeting included a decision to revise the AG "Control List of Biological Agents" by narrowing the scope of the listing for *Mycoplasma mycoides* to include only the specific subspecies and strains of *Mycoplasma mycoides* that are of most concern as the causative agents of disease in animals. This rule amends the EAR to reflect that decision by revising Export Control Classification Number (ECCN) 1C352, which controls certain animal pathogens, to narrow the scope of the listing for *Mycoplasma mycoides* in this ECCN to include only the following subspecies and strains: *Mycoplasma mycoides* subspecies *mycoides* SC (small colony) and *Mycoplasma capricolum* subspecies *capripneumoniae* ("strain F38"). *Mycoplasma mycoides* subspecies *mycoides* SC (small colony) causes severe respiratory disease primarily in cattle (i.e., contagious bovine pleuropneumonia (CBPP)), while *Mycoplasma capricolum* subspecies *capripneumoniae* ("strain F38") causes severe respiratory disease primarily in goats (i.e., contagious caprine pleuropneumonia (CCPP)).

Prior to the publication of this rule, ECCN 1C352 controlled all subspecies and strains of *Mycoplasma mycoides*. *Mycoplasma capricolum* and F38-type caprine *Mycoplasma* (i.e., *Mycoplasma* F38), however, were listed separately under ECCN 1C360, which contains unilaterally controlled select agents not included on any of the AG Common Control Lists. The Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, and the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, maintain controls on the possession, use, and transfer within the United States of the unilaterally controlled select agents listed in ECCN 1C360, as well as certain AG agents and toxins listed in ECCN 1C352. Since *Mycoplasma* F38 (i.e., *Mycoplasma capricolum* subspecies *capripneumoniae* ("strain F38")) is now specifically identified and controlled under ECCN 1C352 and the select agent *Mycoplasma mycoides capri* is no longer controlled under this ECCN, this rule makes conforming changes to the list of unilaterally controlled select agents in ECCN 1C360 by removing *Mycoplasma* F38 from the listing of *Mycoplasma* controlled under this ECCN and adding *Mycoplasma*

mycoides capri. All *Mycoplasma capricolum*, except subspecies *capripneumoniae*, continues to be controlled under ECCN 1C360.

The EAR license requirements that apply to the specific items affected by the amendments to ECCN 1C352 and 1C360 (described above) remain unchanged. The affected items in these ECCNs continue to require a license for export or reexport to all countries or destinations indicated under CB Column 1 or AT Column 1 on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR).

This rule also amends the EAR to reflect the addition of Croatia as the newest participating country in the Australia Group (which now includes a total of 40 countries). Supplement No. 1 to Part 738 (Commerce Country Chart) is revised by removing the license requirements indicated for Croatia, under CB Column 2, to conform with the country scope of the CB license requirements that apply to other AG participating countries (see Section 742.2 of the EAR). Supplement No. 1 to Part 740 (Country Groups) is revised to add Croatia to Country Group A:3 (Australia Group). The definition of "Australia Group" in Section 772.1 of the EAR is updated by adding Croatia to the list of participating countries.

In addition to the AG plenary meeting changes described above, this rule amends the EAR by revising the Technical Note to ECCN 2B352.a to update a reference therein to the World Health Organization (WHO) "Laboratory Biosafety Manual" to identify the current edition of the manual (i.e., 3rd edition, Geneva, 2004). This WHO manual contains safety requirements for P3 or P4 (BL3, BL4, L3, L4) complete containment facilities.

Finally, this rule amends Supplement No. 2 to Part 745 of the EAR (titled "States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction") by adding "Barbados," which became a State Party to the CWC on April 6, 2007. As a result of this change, the CW (Chemical Weapons) license requirements and policies that apply to Barbados now conform with those applicable to other CWC States Parties, as described in Section 742.18 of the EAR. This rule also clarifies the scope of the entry for "China" in the list of CWC States Parties by revising the footnote to this entry to indicate that, for CWC purposes only, China includes "Macau," as well as "Hong Kong."

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order

13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2007, 72 FR 46137 (August 16, 2007), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator "NLR") as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on October 12, 2007, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before October 29, 2007. Any such items not actually exported or reexported before midnight, on October 29, 2007, require a license in accordance with this regulation.

"Deemed" exports of "technology" and "source code" removed from eligibility for export under a license exception or without a license (under the designator "NLR") as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before October 29, 2007. Beginning at midnight on October 29, 2007, such "technology" and "source code" may no longer be released, without a license, to a foreign national subject to the "deemed" export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form

BIS-748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the ADDRESSES section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not

required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 738, 740, 745, 772, and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Supplement No. 1 to part 738 is amended by revising the entry for “Croatia” to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART
[Reason for control]

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Croatia	X			X		X	X	X	X	X		X		X		

PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901-911, Pub. L.

106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 4. In Supplement No. 1 to part 740, Country Groups, Country Group A is

amended by adding, in alphabetical order, a new entry for “Croatia” to read as follows:

Supplement No. 1 to Part 740—Country Groups

COUNTRY GROUP A

Country	Missile technology control regime	Australia group	Nuclear suppliers group
	[A:1]	[A:2]	[A:3]
Croatia		X	

PART 745—[AMENDED]

■ 5. The authority citation for 15 CFR part 745 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p.

950; Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

Supplement No. 2 to Part 745 [Amended]

■ 6. Supplement No. 2 to part 745 is amended:

- a. By revising the undesignated center heading “List of States Parties as of November 1, 2006” to read “List of States Parties as of August 1, 2007”;
- b. By adding, in alphabetical order, the country “Barbados”; and
- c. By revising the footnote for China to read “* For CWC purposes only, China includes Hong Kong and Macau.”

PART 772—[AMENDED]

- 7. The authority citation for 15 CFR part 772 is revised to read as follows:
Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).
- 8. In § 772.1, the definition of “Australia Group” is revised to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Australia Group. The countries participating in the Australia Group have agreed to adopt harmonized controls on certain dual-use chemicals (i.e., precursor chemicals), biological agents, related manufacturing facilities and equipment, and related technology in order to ensure that exports of these items do not contribute to the proliferation of chemical or biological weapons. Countries participating in the Australia Group as of July 1, 2007, include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States. See also § 742.2 of the EAR.

* * * * *

PART 774—[AMENDED]

- 9. The authority citation for 15 CFR part 774 is revised to read as follows:
Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

Supplement No. 1 to Part 774—[Amended]

- 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1C352 is amended by revising paragraph (b) under “*Items*” in the List of Items Controlled to read as follows:

1C352 Animal pathogens, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

* * * * *

- b. Bacteria, as follows:
 - b.1. *Mycoplasma mycoides*, as follows:
 - b.1.a. *Mycoplasma mycoides* subspecies *mycoides* SC (small colony) (a.k.a. contagious bovine pleuropneumonia);
 - b.1.b. *Mycoplasma capricolum* subspecies *capripneumoniae* (“strain F38”).
 - b.2. [RESERVED.]

Supplement No. 1 to Part 774—[Amended]

- 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms” & “Toxins,” ECCN 1C360 is amended by revising paragraph (b)(2) under “*Items*” in the List of Items Controlled to read as follows:

1C360 Select agents not controlled under ECCN 1C351, 1C352, or 1C354.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

* * * * *

- b. * * *
 - b.2. *Mycoplasma*, as follows:
 - b.2.a. *Mycoplasma capricolum*, except subspecies *capripneumoniae* (see ECCN 1C352.b.1.b);
 - b.2.b. *Mycoplasma mycoides capri*;

* * * * *

Supplement No. 1 to Part 774—[Amended]

- 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended by revising parenthetical phrase “(Geneva, 1983)” to read “(3rd edition, Geneva, 2004)” in the Technical Note immediately following paragraph (a) in the List of Items Controlled.

Dated: September 6, 2007.
Christopher A. Padilla,
Assistant Secretary for Export Administration.
 [FR Doc. E7–18018 Filed 9–11–07; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9338]

RIN 1545–BE47

Information Returns Required With Respect to Certain Foreign Corporations and Certain Foreign-Owned Domestic Corporations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains a correction to final regulations (TD 9338) that were published in the **Federal Register** on Friday, July 13, 2007 (72 FR 38475) providing guidance under sections 6038 and 6038A of the Internal Revenue Code. The final regulations clarify the information required to be furnished regarding certain related party transactions of certain foreign corporations and certain foreign-owned domestic corporations.

DATES: The correction is effective September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Kate Y. Hwa at (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of the correction are under Sections 6038 and 6038A of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9338) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9338), which were the subject of FR Doc. E7–13587, is corrected as follows:

On page 38475, in the document heading, the language “RIN 1545–

BG11” is corrected to read “RIN 1545–BE47.”

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–17820 Filed 9–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2509

RIN 1210–AB22

Amendment to Interpretive Bulletin 95–1

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final rule.

SUMMARY: This document contains an interim final rule that amends Interpretive Bulletin 95–1 to limit the application of the Bulletin to the selection of annuity providers for defined benefit plans. This interim final rule implements section 625 of the Pension Protection Act of 2006. Also appearing in today’s **Federal Register** is a proposed regulation, entitled “Selection of Annuity Providers for Individual Account Plans”, which, in the form of a safe harbor, provides guidance concerning the fiduciary considerations attendant to the selection of annuity providers and contracts for purposes of benefit distributions from individual account plans. The amendment to Interpretive Bulletin 95–1, as well as the proposed safe harbor for annuity selections, will affect plan sponsors and fiduciaries of individual account plans, and the participants and beneficiaries covered by such plans.

DATES: This interim final rule is effective November 13, 2007. Written comments on the interim final rule should be received by the Department of Labor on or before November 13, 2007.

ADDRESSES: To facilitate the receipt and processing of comments, the Department encourages interested persons to submit their comments electronically to www.regulations.gov (follow instructions for submission of comments) or e-ORI@dol.gov. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments to: Office of Regulations and Interpretations, Employee Benefits Security

Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Interpretive Bulletin 95–1. Comments received will be posted without change, including any personal information provided, to www.regulations.gov and <http://www.dol.gov/ebsa>, and also available for public inspection at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC, 20210.

FOR FURTHER INFORMATION CONTACT: Janet A. Walters or Allison E. Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210 (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

In 1995, the Department issued Interpretive Bulletin 95–1 (29 CFR 2509.95–1) (the IB), providing guidance concerning the fiduciary standards under Part 4 of Title I of ERISA applicable to the selection of annuity providers for purposes of pension plan benefit distributions. In general, the IB makes clear that the selection of an annuity provider in connection with benefit distributions is a fiduciary act governed by the fiduciary standards of section 404(a)(1), including the duty to act prudently and solely in the interest of the plan’s participants and beneficiaries. In this regard, the IB provides that plan fiduciaries must take steps calculated to obtain the safest annuity available, unless under the circumstances it would be in the interest of the participants and beneficiaries to do otherwise. The IB also provides that fiduciaries must conduct an objective, thorough and analytical search for purposes of identifying providers from which to purchase annuities and sets forth six factors that should be considered by fiduciaries in evaluating a provider’s claims paying ability and creditworthiness.

In Advisory Opinion 2002–14A (Dec. 18, 2002) the Department expressed the view that the general fiduciary principles set forth in the IB with regard to the selection of annuity providers apply equally to defined benefit and defined contribution plans. The opinion recognized that, the selection of annuity providers by the fiduciary of a defined contribution plan would be governed by section 404(a)(1) and, therefore, such

fiduciary, in evaluating claims paying ability and creditworthiness of an annuity provider, should take into account the six factors set forth in 29 CFR 2509.95–1(c).

During 2005, the ERISA Advisory Council created the Working Group on Retirement Distributions & Options to study, in part, the nature of the distribution options available to participants of defined contribution plans. In November 2005, after public hearings and testimony, the Advisory Council issued a report, entitled Report of the Working Group on Retirement Distributions & Options,¹ concluding that many defined contribution plan distributions tend to be paid out in lump sums which “expose retirees to a wide range of risks including the possibility of outliving assets, investment losses, and inflation risk.” The Advisory Council recommended that the Department revise Interpretive Bulletin 95–1 to facilitate the availability of annuity options in defined contribution plans.

The Pension Protection Act of 2006 (the PPA) (Pub. L. 109–280, 120 Stat. 780) was enacted on August 17, 2006. Section 625 of the PPA directs the Secretary to issue final regulations within one year of the date of enactment, clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan is not subject to the safest available annuity standard under Interpretive Bulletin 95–1 and is subject to all otherwise applicable fiduciary standards.

Consistent with section 625 of the PPA, the Department is amending Interpretive Bulletin 95–1 to limit its application only to defined benefit plans. The Department is also proposing the adoption of a regulation, published in today’s **Federal Register**, which, in the form of a safe harbor, provides guidance concerning the fiduciary considerations attendant to the selection of annuity providers and contracts for purposes of benefit distributions from individual account plans.

B. Overview of Interim Final Rule

In order to implement the Congressional mandate of section 625 of the PPA and to eliminate any confusion regarding the applicability of the fiduciary standards set forth in IB 95–1 to the selection of annuity providers for the purpose of benefit distributions from individual account plans, the

¹ A copy of the Report can be found on the About EBSA page under the heading ERISA Advisory Council at http://www.dol.gov/ebsa/publications/AC_1105A_report.html.

Department is amending Interpretive Bulletin 95-1 to provide that Interpretive Bulletin 95-1 is applicable only to the selection of annuity providers for the purpose of benefit distributions from a defined benefit pension plan.

C. Good Cause Finding That Proposed Rulemaking Unnecessary

Rulemaking under section 553 of the Administrative Procedure Act (APA) ordinarily involves publication of a notice of proposed rulemaking in the **Federal Register** and the public is given an opportunity to comment on the proposed rule. The APA authorizes agencies to dispense with proposed rulemaking procedures, however, if they find both good cause that such procedures are impracticable, unnecessary, or contrary to the public interest, and incorporate a statement of the finding with the underlying reasons in the interim final rule issued.

In this case, the Department finds that it is unnecessary to undertake proposed rulemaking with regard to the amendment of Interpretive Bulletin 95-1. The Department believes such rulemaking is unnecessary because section 625 of the Pension Protection Act of 2006 specifically directs the Secretary to issue final regulations within one year clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan is not subject to the safest available annuity standard under the Interpretive Bulletin 95-1. The amendment to Interpretive Bulletin 95-1 contained in this document does nothing more than limit, consistent with the statutory directive, the application of the Bulletin to defined benefit plans, thereby establishing that the "safest available" standard does not apply to individual account plans. To avoid any confusion on the part of the regulated community, the amendment includes a reference to separate guidance for the selection of annuity providers for individual account plans.

For the foregoing reason, the Department finds that proposed rulemaking procedures are unnecessary and is publishing the rule as an interim final rule. Nevertheless, the Department is affording interested persons the opportunity to comment on the amendment. Because the Department exercised very limited discretion in implementing the directive contained in section 625 of the Pension Protection Act of 2006, the Department is limiting the comment period to 60 days.

D. Request for Comments

The Department invites comments from interested persons. To facilitate the receipt and processing of comments, EBSA encourages interested persons to submit their comments electronically to www.regulations.gov (follow instructions for the submission of comments) or e-ORI@dol.gov. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Interpretive Bulletin 95-1. All comments will be available to the public, without charge, online at www.regulations.gov and <http://www.dol.gov/ebsa>, and at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210 from 8 a.m. to 4:30 p.m. (Monday-Friday).

E. Effective Date

This interim final rule is effective 60 days after the date of publication in the **Federal Register**.

F. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. For purposes of Executive Order 12866, the Department has determined

that it is appropriate to review the amendment contained in this document, which merely serves to make clear that the standards set forth in Interpretive Bulletin 95-1 no longer apply to individual account plans, in conjunction with the review of the proposed rule, also appearing in today's **Federal Register**, that establishes, in the form of safe harbor, standards for the selection of annuity providers and contracts by fiduciaries of individual account plans. As reflected in that analysis, the Department believes that these regulatory actions are not economically significant within the meaning of section 3(f)(1) of the Executive Order. The actions, however, have been determined to be significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides an assessment of the potential costs and benefits. See notice of proposed rulemaking appearing in today's **Federal Register** entitled Selection of Annuity Providers for Individual Account Plans.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Because this rule is being issued as an interim final rule, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct an initial regulatory flexibility analysis. Nevertheless, the Department has considered the likely impact of the interim rule on small entities in connection with its assessment under Executive Order 12866, described above, and believes this rule will not have a significant impact on a substantial number of small entities. See notice of proposed rulemaking appearing in today's **Federal Register** entitled Selection of Annuity Providers for Individual Account Plans.

Paperwork Reduction Act

This rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 301 *et seq.*) because it does not contain "collection of information" requirements as defined in 44 U.S.C. 3502(3). Accordingly, this interim final rule is not being submitted to the OMB for review under the Paperwork Reduction Act.

Congressional Review Act

The interim final rule being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The interim final rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it does not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the interim final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding \$100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions

specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the interim rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2509

Employee benefit plans, Pensions.

■ For the reasons set forth in the preamble, the Department amends Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

■ 1. The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135. Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003). Sections 2509.75-10 and 2509.75-2 issued under 29 U.S.C. 1052, 1053, 1054. Sec. 2509.75-5 also issued under 29 U.S.C. 1002. Sec. 2509.95-1 also issued under sec. 625, Pub. L. 109-280, 120 Stat. 780.

■ 2. Section 2509.95-1 is amended by revising the section heading and paragraph (a) to read as follows:

§ 2509.95-1 Interpretive bulletin relating to the fiduciary standards under ERISA when selecting an annuity provider for a defined benefit pension plan.

(a) *Scope.* This Interpretive Bulletin provides guidance concerning certain fiduciary standards under part 4 of title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1104-1114, applicable to the selection of an annuity provider for the purpose of benefit distributions from a defined benefit pension plan (hereafter "pension plan") when the pension plan intends to transfer liability for benefits to an annuity provider. For guidance applicable to the selection of an annuity provider for benefit distributions from an individual account plan see 29 CFR 2550.404a-4.

* * * * *

Signed at Washington, DC, this 31st day of August, 2007.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7-17744 Filed 9-11-07; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[CGD01-07-132]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the NJTRO Lower Hack Bridge across the Hackensack River, mile 3.4, at Jersey City, New Jersey. Under this temporary deviation, the NJTRO Lower Hack Bridge may remain in the closed position from 7 a.m. on Saturday, September 22, 2007 through 7 p.m. on Sunday, September 23, 2007. Vessels that can pass under the draw without a bridge opening may do so at all times. In the event of inclement weather, the rain dates will be September 29, 2007 and September 30, 2007. This deviation is necessary to facilitate aerial cable installation at the bridge.

DATES: This deviation is effective from 7 a.m. on September 22, 2007 through 7 p.m. on September 30, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7165.

SUPPLEMENTARY INFORMATION: The NJTRO Lower Hack Bridge, across the Hackensack River, mile 3.4, at Jersey City, New Jersey, has a vertical clearance in the closed position of 40 feet at mean high water and 45 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(b).

On July 26, 2007, the Coast Guard authorized a temporary deviation [CGD01-07-093] to facilitate aerial cable installation at the bridge. Under that deviation the NJTRO Lower Hack Bridge remained closed for vessel traffic for four weekends, July 28 and 29,

August 4 and 5, August 11 and 12, and August 18 and 19, 2007, from 7 a.m. each Saturday morning through 7 p.m. each Sunday evening.

The owner of the bridge, New Jersey Transit Rail Operation (NJTRO), requested a second temporary deviation to facilitate the completion of the aerial cable installation at the bridge. The aerial cable installation was unexpectedly not finished during the previously authorized temporary deviation, making additional time necessary for the completion of this project.

Under this temporary deviation the NJTRO Lower Hack Bridge need not open for the passage of vessel traffic for from 7 a.m. Saturday, September 22, 2007 through 7 p.m. on Sunday, September 23, 2007. Vessels that can pass under the bridge without a bridge opening may do so at all times. In the event of inclement weather, the rain dates will be September 29, 2007 and September 30, 2007.

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

Dated: September 4, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7-17996 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-07-089]

RIN 1625-AA-09

Drawbridge Operation Regulations; Potomac River, Between Maryland and Virginia

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the new Woodrow Wilson Memorial (I-95) Bridge, mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This deviation allows the new drawbridge to remain closed-to-navigation from 7 a.m. beginning on September 17, 2007 until

and including 11:59 p.m. on October 19, 2007, to facilitate completion of concrete pours for the new Woodrow Wilson Bridge construction project.

DATES: This deviation is effective from 7 a.m. on September 17, 2007, until 11:59 p.m. on October 19, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT:

Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION: The new Woodrow Wilson (lift) Bridge has a vertical clearance in the closed position to vessels of 75 feet, above mean high water.

Coordinators for the construction of the new Woodrow Wilson Bridge Project has requested a temporary deviation from the current operating regulations set out in 33 CFR part 117.255(a) to close the drawbridge to navigation to facilitate concrete pours at the rear and finger joints of the movable span.

To facilitate the concrete pours, the Woodrow Wilson Bridge will be maintained in the closed-to-navigation position from 7 a.m. on Monday, September 17, 2007 until and including 11:59 p.m. on Friday, October 19, 2007.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

Dated: September 5, 2007.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E7-18017 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-07-129]

Drawbridge Operation Regulations; Jamaica Bay, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Beach Channel Railroad Bridge across Jamaica Bay, mile 6.7, at New York, New York. Under this temporary deviation, in effect for four weekends in September, the Beach Channel Railroad Bridge may remain in the closed position on Saturdays and Sundays from 6 a.m. to 9 p.m. This deviation is necessary to facilitate bridge track repairs.

DATES: This deviation is effective from September 8, 2007 through September 30, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223-8364. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223-8364.

SUPPLEMENTARY INFORMATION: The Beach Channel Railroad Bridge, across Jamaica Bay, mile 6.7, at New York, New York, has a vertical clearance in the closed position of 26 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.5.

The owner of the bridge, New York City Transit Authority, requested a temporary deviation to facilitate repairs to the bridge rails.

Under this temporary deviation, in effect for four successive weekends, the Beach Channel Railroad Bridge need not open for the passage of vessel traffic on Saturday and Sunday between 6 a.m. and 9 p.m. on September 8, 9, 15, 16, 22, 23, 29, and 30, 2007.

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

Dated: September 4, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7-17994 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 40**

[EPA-HQ-ORD-2007-0419; FRL-8466-9]

RIN 2080-AA12

Revising the Budget Period Limitation for Research Grants and Cooperative Agreements**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking direct final action on Revising the Budget Period Limitation for Research Grants and Cooperative Agreements. This amendment will remove the budget period limitation for research and demonstration grants and cooperative agreements. This change is administrative in nature. The current rule sets forth a maximum budget period of 24 months for all grants and cooperative agreements awarded for research and demonstration projects, which can be extended on a case-by-case basis. Extensions are often requested creating an administrative burden for the EPA. All research and demonstration grants will continue to adhere to the project period limitation of five years. This change will not adversely affect any current or future research or demonstration efforts.

DATES: This rule is effective on November 13, 2007 without further notice, unless EPA receives adverse comments by October 12, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2007-0419 by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: ord.docket@epa.gov.
- *Fax*: 202-566-9744.
- *Mail*: Office of Research and Development (ORD) Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery*: EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-ORD-2007-0419. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2007-

0419. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the *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 ORD Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, 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 ORD Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: John J. Nanartowicz III, Office of Research and Development (ORD) Mail Code 8102R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The

telephone number is (202) 564-4756; facsimile number is (202) 565-2904; and e-mail is Nanartowicz.John@epa.gov.

SUPPLEMENTARY INFORMATION:

Constituency Effected: All Office of Research and Development award recipients for research grants and cooperative agreements.

I. Background

Forty CFR part 40 establishes the applicable policies and procedures governing the award of research and demonstration grants by the EPA. The provisions found in part 40 are the principal mechanisms that ORD uses to provide grant assistance. This direct final rule will address an issue that has become an administrative burden for the EPA. The current regulation at § 40.125-1(a) restricts the budget period for research and demonstration projects to 24 months. This restriction is in conflict with 40 CFR Part 30 (Subpart A, Section 30.2(z)), which stipulates that the project period for grants is established through the award document, during which Federal sponsorship begins and ends. This section allows for the creation of project periods of up to 5 years through the award document (grant or cooperative agreement).

Project period definitions are historically based on grantee applications. The budget period limitation specified at § 40.125-1(a) has become a burden for EPA in both programmatic and administrative terms. This self imposed restriction has impacted active assistance agreements by requiring that grantees apply for budget period extensions for their project grants. Accordingly, the Agency is compelled to respond to these requests. Due to the unpredictability of research, many projects fail to adhere to the two-year time limitation set forth in part 40. These deviation requests have become a routine occurrence for many research grants. A recent procedures and policy review by the Grants Administration Division (GAD) identified this issue to the Agency and highlighted the administrative burden that has accompanied the processing of these rule deviations.

EPA's amendment of the rule is the final solution for the restrictive budget period limitation. This change will substantially reduce the administrative burden for the Agency and grantees by minimizing the number of administrative actions (i.e., deviations) that will be processed during the life of a grant or cooperative agreement. This change will not adversely affect any current or future research efforts.

II. Additional Supplementary Information

This action announces EPA's amendment of 40 CFR 40.125.

III. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, since the proposed change addresses an administrative requirement, which is internal to the Agency. No information will be collected from either current or future grantees by way of this proposed change.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

This direct 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 direct final rule is not subject to notice and comment requirements under the APA or any other statute because this rule

pertains to grant award and administration matters which the APA expressly exempts from notice and comment rulemaking requirements (5 U.S.C. 553(a)(2)).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires that EPA 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. The EPA has determined that this rule change contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Additionally, the rule change does not contain any regulatory requirements that might significantly or uniquely affect small governments. UMRA does not apply to rules that govern the award and administration of grants. Thus, today's direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on 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."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This proposed direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Further, because this rule regulates the use of federal financial assistance, it will not impose substantial direct compliance costs to the states.

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 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.”

This proposed direct final rule does not have Tribal implications. It 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. This rule applies to the terms that define the availability of use for federal financial assistance for research and demonstration grants. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that is determined to be: (1) “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, EPA 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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed direct final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required 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, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This proposed direct final rule does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it does not affect the level of protection provided to human health or the environment. This rule change pertains to grant award and administration matters.

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). This rule will be effective November 13, 2007.

List of Subjects in 40 CFR Part 40

Environmental protection, Administrative practice and procedure, Research and demonstration grants, Grant programs—environmental protection, Grant limitations, and Reporting and recordkeeping requirements.

Dated: September 6, 2007.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, 40 CFR part 40 is amended as follows:

PART 40—[AMENDED]

■ 1. The authority citation for part 40 is revised to read as follows:

Authority: 42 U.S.C. 1857 *et seq.*

§ 40.125–1 [Amended]

■ 2. Section 40.125–1 is amended by removing and reserving paragraph (a).

[FR Doc. E7–18000 Filed 9–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–NC–0004–200704(a); FRL–8465–4]

Approval and Promulgation of Implementation Plans North Carolina: Mecklenburg County Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the North Carolina State Implementation Plan (SIP). On February 16, 2005, the North Carolina Department of Environment and Natural Resources submitted revisions to the Mecklenburg County Air Pollution Control Ordinance (MCAPCO) to be incorporated into the Mecklenburg County portion of the North Carolina SIP. The revisions include changes to MCAPCO 2.0902, “Applicability,” and 2.0933, “Petroleum Liquid Storage in External Floating Roof Tanks.” These changes were made to maintain consistency with State and federal regulations, and are part of Mecklenburg County’s strategy to attain and maintain the 8-hour ozone National Ambient Air Quality Standard (NAAQS), by reducing precursors to ozone. EPA is approving this SIP revision pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective November 13, 2007 without further notice, unless EPA receives adverse comment by October 12, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2005-NC-0004, by one of the following methods:

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

2. *E-mail*: hou.james@epa.gov.

3. *Fax*: (404) 562-9019.

4. *Mail*: "EPA-R04-OAR-2005-NC-0004," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2005-NC-0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8965. Mr. Hou can also be reached via electronic mail at hou.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On February 16, 2005, the North Carolina Department of Environment and Natural Resources submitted a SIP revision including changes to the MCAPCO, to be incorporated into the Mecklenburg County portion of the North Carolina SIP. The SIP revision includes changes to MCAPCO 2.0902, "Applicability," and 2.0933, "Petroleum Liquid Storage in External Floating Roof Tanks." Specifically, the changes to MCAPCO 2.0902 consist of a recodification, which is essentially a reorganization of the code, to remove

obsolete provisions. The change to MCAPCA 2.0933 rewords a provision that was already incorporated into the SIP, and does not alter the meaning or interpretation of that provision.

II. Final Action

EPA is approving the aforementioned changes to the Mecklenburg County portion of the North Carolina SIP, because the revisions are consistent with CAA and EPA regulatory requirements. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 13, 2007 without further notice unless the Agency receives adverse comments by October 12, 2007.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 13, 2007 and no further action will be taken on the proposed rule. *Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.*

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. As a result, the action does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by November 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 27, 2007.

Russell L. Wright, Jr.,
Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(c), Table 3 is amended by revising entries for "2.0902" and "2.0933" to read as follows:

§ 52.1770 Identification of plan.

* * * * *
(c) * * *

TABLE 3.—EPA APPROVED MECKLENBURG COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
2.0902	Applicability	10/16/2004	9/12/07 [Insert citation of publication].	*
2.0933	Petroleum Liquid Storage In External Floating Roof Tanks.	10/16/2004	9/12/07 [Insert citation of publication].	*
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

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[FR Doc. E7-17797 Filed 9-11-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[EPA-HQ-OPP-2007-0097; FRL-8142-2]

Captan, 2,4-D, Dodine, DCPA, Endothall, Fomesafen, Propyzamide, Ethofumesate, Permethrin, Dimethipin, and Fenarimol; Tolerance Actions**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is revoking certain tolerances for captan, 2,4-D, dodine, endothall, propyzamide, permethrin, ethofumesate and dimethipin. Also, EPA is modifying certain tolerances for captan, 2,4-D, dodine, DCPA, endothall, propyzamide, permethrin, ethofumesate, and fomesafen. In addition, EPA is establishing new tolerances for captan, 2,4-D, dodine, propyzamide, permethrin, and ethofumesate. EPA is not taking action on the proposed change to the fenarimol tolerance on apples at this time. The regulatory actions in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q) as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective September 12, 2007. Objections and requests for hearings must be received on or before November 13, 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-2007-0097. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov> or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, 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: Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0048; e-mail address: smith.jane-scott@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities 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. How Can I Access Electronic Copies of this Document?

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. 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-2007-0097 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 on or before November 13, 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 your copies, identified by docket ID number EPA-HQ-OPP-2007-0097, by one of the following methods.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, 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. Background

A. What Action is the Agency Taking?

In the **Federal Register** of June 6, 2007 (72 FR 31221) (FRL-8122-7), EPA issued a proposed rule to revoke, remove, modify, and establish certain tolerances and/or tolerance exemption for residues for the fungicides captan, dodine, and fenarimol; the herbicides 2,4-D, DCPA, endothall, propyzamide, ethofumesate, dimethipin and fomesafen; and the insecticide permethrin. Also, the proposal of June 6, 2007 (72 FR 31221), provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under the FFDCA standards.

EPA is revoking, removing, modifying, and establishing specific tolerances for residues of the fungicides captan, dodine, and fenarimol; the herbicides 2,4-D, DCPA, endothall, propyzamide, ethofumesate, dimethipin and fomesafen; and the insecticide permethrin in or on the commodities listed in the regulatory text.

EPA is finalizing these tolerance actions in order 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 FQPA. 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 certain tolerance actions to be implemented to reflect current use patterns, to 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: [\[www.ntis.gov/\]\(http://www.ntis.gov/\). Electronic copies of REDs and TREDs are available on the internet at: <http://www.epa.gov/pesticides/reregistration/status.htm> and in the public dockets EPA-HQ-OPP-2007-0097 and also EPA-HQ-OPP-2005-0266 \(dodine\); EPA-HQ-OPP-2004-0370 \(endothall\); EPA-HQ-OPP-2004-0380 \(dimethipin\); EPA-HQ-OPP-2002-0159 \(propyzamide\); EPA-HQ-OPP-2004-0346 \(ethofumesate\); EPA-HQ-OPP-2004-0385 \(permethrin\); EPA-HQ-OPP-2004-0167 \(2,4-D\); EPA-HQ-OPP-2004-0296 \(captan\) and EPA-HQ-OPP-2002-0250 and EPA-HQ-OPP-2005-0459 \(fenarimol\) at: <http://www.regulations.gov>.](http://</p>
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In this final rule, EPA is revoking certain tolerances and tolerance exemptions because these specific tolerances and exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions 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 or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of June 6, 2007 (72 FR 31221), EPA received two comments during the 60-day public comment period, as follows:

Comment--general. A comment was received from a private citizen that expressed concern with pesticide residues in general, that tolerance levels

should be zero, and to disallow the use of numerous toxic chemicals.

Agency Response. The private citizen's comment did not take issue with the Agency's conclusion that specific tolerances in the proposed rule should be revoked, established and/or modified. The Agency conducts a detailed risk assessment to determine whether establishing and/or increasing tolerances is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue in accordance with FFDCA section 408, 21 U.S.C. 346a. Also, it is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. In developing REDs and TREDs, EPA worked with stakeholders, pesticide registrants, growers and other pesticide users, environmental and public health interests, the States, the U.S. Department of Agriculture (USDA), other Federal agencies, and others to develop voluntary measures or regulatory controls needed to effectively reduce risks of concern. Such options include voluntary cancellations of pesticide products or deletion of uses, declaring certain uses ineligible or not yet eligible and many other measures.

Comment--permethrin: A comment was received noting an inconsistency for the permethrin tolerance proposed in/on leaf petioles subgroup 4B at 5.0 ppm. The Agency proposed a tolerance for permethrin in/on leaf petioles subgroup 4B at 5.0 ppm when there is an existing tolerance for vegetable, leafy, except brassica, group 4 at 20 ppm, which is inclusive of the leaf petiole subgroup 4B. To correct this inconsistency, the commenter suggested either the proposed tolerance for leaf petioles should be dropped or the vegetable, leafy, except brassica, group 4 should be changed to leafy greens subgroup 4A.

Agency Response: The Agency proposed a tolerance of 5.0 ppm in/on leaf petioles subgroup 4B based on available field trial data that indicate residues of permethrin as high as 4.0 ppm in/on celery. The crop group tolerance in/on vegetable, leafy, except brassica, group 4 at 20 ppm was already in place and is inclusive of the leaf petioles subgroup 4B. Based on the proposal, tolerances of both 5.0 ppm and 20 ppm would exist on the commodities that are in both the leaf petioles subgroup 4B and the vegetable, leafy, except brassica, group 4, inadvertently creating an inconsistency. To correct this inconsistency, the Agency agrees with the commenter that

the existing permethrin tolerance expression in/on vegetable, leafy, except brassica, group 4 at 20 ppm should be revised to leafy greens subgroup 4A at 20 ppm and establish the tolerance in/on leaf petioles subgroup 4B at 5.0 ppm as proposed.

The Agency did not receive comments on the following chemicals: Captan, 2,4-D, DCPA, dodine, dimethipin, endothall, ethofumesate, fenarimol, and formesafen. Therefore, the Agency is finalizing, with the exception of the fenarimol tolerance, the amendments proposed in the **Federal Register** of June 6, 2007 (72 FR 31221). The fenarimol tolerance on apple proposed at 0.3 ppm cannot be finalized at this time due to changes that have occurred that may affect the risk assessment for this chemical. For a detailed discussion of the Agency's rationale for the establishments, revocations, and modifications to the tolerances, refer to the June 6, 2007 proposed rule.

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

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under FQPA. The safety finding determination is found in detail in each 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. of the proposed rule.

EPA has issued post-FQPA REDs for 2,4-D, dodine, DCPA, endothall, ethofumesate, permethrin, and dimethipin, and TREDs for captan, propyzamide, and fenarimol, whose REDs were both completed prior to FQPA. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses,

and 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 FQPA standard of "reasonable certainty of no harm." However, tolerance revocations recommended in REDs and TREDs that are made final 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. 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.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues 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). If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 180.6(c)).

C. When Do These Actions Become Effective?

These actions become effective on the date of publication of this final rule in the **Federal Register** because their associated uses have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the 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 a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Are the Actions Consistent with International Obligations?

The tolerance revocations in this final rule are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standard 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 levels (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 final rule and how they compare to Codex MRLs (if any) are discussed in Unit II.A. of the proposed rule.

IV. Statutory and Executive Order Reviews

In this final rule, EPA is establishing tolerances under FFDCA section 408(e), and modifying and revoking 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 final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). 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.*, 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 final rule, the Agency hereby certifies

that this 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 final rule). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist that would change EPA's previous analysis. 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 final 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 FFDCFA. For these same reasons, the Agency has determined that this final 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 final 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 final 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: August 27, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.103 is revised to read as follows:

§ 180.103 Captan; tolerances for residues.

(a)(1) *General.* Tolerances are established for residues of the fungicide, captan (N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) in or on the following commodities:

Commodity	Parts per million
Almond	0.25
Almond, hulls	75.0
Animal feed, nongrass, group 18	0.05
Apple	25.0
Apricot	10.0
Blueberry	20.0
Caneberry, subgroup 13A	25.0
Cherry, sweet	50.0
Cherry, tart	50.0
Cotton, undelinted seed	0.05
Dill, seed	0.05
Flax, seed	0.05
Grape	25.0
Grain, cereal, forage, fodder and straw, group 16	0.05
Grain, cereal, group 15	0.05
Grass, forage	0.05
Grass, hay	0.05
Nectarine	25.0
Okra	0.05
Peach	15.0
Peanut	0.05
Peanut, hay	0.05

Commodity	Parts per million
Pear	25.0
Plum, prune, fresh	10.0
Rapeseed, forage	0.05
Rapeseed, seed	0.05
Safflower, seed	0.05
Sesame, seed	0.05
Strawberry	20.0
Sunflower, seed	0.05
Vegetable, brassica leafy, group 5	0.05
Vegetable, bulb, group 3	0.05
Vegetable, cucurbit, group 9	0.05
Vegetable, foliage of legume, group 7	0.05
Vegetable, fruiting, group 8	0.05
Vegetable, leafy, except brassica, group 4	0.05
Vegetable, leaves of root and tuber, group 2	0.05
Vegetable, legume, group 6	0.05
Vegetable, root and tuber, group 1	0.05

(2) Tolerances are established for the combined residues of the fungicide, captan (N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) and its metabolite 1,2,3,6-tetrahydrophthalimide (THPI), measured at THPI, in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.15
Cattle, meat	0.20
Cattle, meat byproducts	0.30
Goat, fat	0.15
Goat, meat	0.20
Goat, meat byproducts	0.30
Hog, fat	0.15
Hog, meat	0.20
Hog, meat byproducts	0.30
Horse, fat	0.15
Horse, meat	0.20
Horse, meat byproducts	0.30
Milk	0.10
Sheep, fat	0.15
Sheep, meat	0.20
Sheep, meat byproducts	0.30

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registrations. [Reserved]

(d) Indirect or inadvertent residues. [Reserved]

■ 3. Section 180.142 is revised to read as follows:

§ 180.142 2,4-D; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, plant regulator, and fungicide 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on the following food commodities:

Commodity	Parts per million
Almond hulls	0.1
Asparagus	5.0
Barley, bran	4.0
Barley, grain	2.0
Barley, straw	50
Berry, group 13	0.2
Cattle, fat	0.3
Cattle, kidney	4.0
Cattle, meat	0.3
Cattle, meat byproducts, except kidney	0.3
Corn, field, forage	6.0
Corn, field, grain	0.05
Corn, field, stover	50
Corn, pop, grain	0.05
Corn, pop, stover	50
Corn, sweet, forage	6.0
Corn, sweet, kernel plus cob with husks removed	0.05
Corn, sweet, stover	50
Fish	0.1
Fruit, citrus, group 10	3.0
Fruit, pome, group 11	0.1
Fruit, stone, group 12	0.1
Goat, fat	0.3
Goat, kidney	4.0
Goat, meat	0.3
Goat, meat byproducts, except kidney	0.3
Grain, aspirated fractions	40
Grape	0.1
Grass, forage	360
Grass, hay	300
Hop, dried cones	0.2
Horse, fat	0.3
Horse, kidney	4.0
Horse, meat	0.3
Horse, meat byproducts, except kidney	0.3
Millet, forage	25
Millet, grain	2.0
Millet, straw	50
Milk	0.05
Nut, tree, group 14	0.2
Oat, forage	25
Oat, grain	2.0
Oat, straw	50
Pistachio	0.05
Potato	0.4
Rice, grain	0.5
Rice, hulls	2.0
Rice, straw	10
Rye, bran	4.0
Rye, forage	25
Rye, grain	2.0
Rye, straw	50
Sheep, fat	0.3
Sheep, kidney	4.0
Sheep, meat	0.3
Sheep, meat byproducts, except kidney	0.3
Shellfish	1.0
Sorghum, grain, forage	0.2
Sorghum, grain, grain	0.2
Sorghum, grain, stover	0.2
Soybean, forage	0.02
Soybean, hay	2.0
Soybean, seed	0.02
Strawberry	0.1
Sugarcane, cane	0.05
Sugarcane, molasses	0.2
Vegetable, leaves of root and tuber, group 2	0.1

Commodity	Parts per million
Vegetable, root and tuber, except potato, group 1	0.1
Wheat, bran	4.0
Wheat, forage	25
Wheat, grain	2.0
Wheat, straw	50

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registrations. Tolerances with regional registration, as defined in § 180.1(m), are established for residues of the herbicide, plant regulator, and fungicide 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on the following food commodities:

Commodity	Parts per million
Rice, wild, grain	0.05

(d) Indirect or inadvertent residues. Tolerances are established for indirect or inadvertent residues of the herbicide, plant regulator, and fungicide 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on the following food commodities:

Commodity	Parts per million
Animal feed, nongrass, group 18	0.2
Avocado	0.05
Cotton, undelinted seed	0.05
Dill, seed	0.05
Okra	0.05
Vegetable, brassica leafy, group 5	0.4
Vegetable, bulb, group 3	0.05
Vegetable, cucurbit, group 9	0.05
Vegetable, foliage of legume, group 7	0.2
Vegetable, fruiting, group 8	0.05
Vegetable, leafy, except brassica, group 4	0.4
Vegetable, legume, group 6	0.05

■ 4. Section 180.172 is revised to read as follows:

§ 180.172 Dodine; tolerances for residues.

(a) *General.* Tolerances are established for the fungicide dodine (n-dodecylguanidine acetate) in or on the following food commodities:

Commodity	Parts per million
Apple	5.0
Apple, wet pomace	15.0
Cherry, sweet	3.0
Cherry, tart	3.0
Peach	5.0

Commodity	Parts per million
Pear	5.0
Pecan	0.3
Strawberry	5.0
Walnut	0.3

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registrations. [Reserved]

(d) Indirect or inadvertent residues. [Reserved]

■ 5. Section 180.185 is revised to read as follows:

§ 180.185 DCPA; tolerances for residues.

(a) *General.* Tolerances for the combined residues of the herbicide dimethyl tetrachloroterephthalate (DCPA) and its metabolites monomethyltetrachloroterephthalate (MTP) and tetrachloroterephthalic acid (TCP) (calculated as dimethyl tetrachloroterephthalate) are established in or on the following food commodities:

Commodity	Parts per million
Cantaloupe	1.0
Garlic	1.0
Ginseng	2.0
Horseradish	2.0
Muskmelon	1.0
Onion, bulb	1.0
Strawberry	2.0
Tomato	1.0
Watermelon	1.0

(b) Section 18 emergency exemptions. [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(m), are established for the combined inadvertent residues of the herbicide dimethyl tetrachloroterephthalate (DCPA) and its metabolites monomethyl tetrachloroterephthalate acid (MTP) and tetrachlorophthalic acid (TCP) (calculated as DCPA) in or on the following food commodities:

Commodity	Parts per million
Radish, roots	2.0
Radish, tops	15.0

(d) *Indirect or inadvertent residues.* Tolerances are established for the combined indirect or inadvertent residues of the herbicide dimethyl tetrachloroterephthalate (DCPA) and its metabolites monomethyl tetrachloroterephthalate acid (MTP) and tetrachlorophthalic acid (TCP) (calculated as DCPA) in or on the following food commodities:

Commodity	Parts per million
Basil, dried leaves	20.0
Basil, fresh leaves	5.0
Bean, dry	2.0
Bean, mung, seed	2.0
Bean, snap, succulent	2.0
Celeriac	2.0
Chicory, roots	2.0
Chicory, tops	5.0
Chive	5.0
Coriander, leaves	5.0
Corn, field, forage	0.4
Corn, field, grain	0.05
Corn, field, stover	0.4
Corn, pop, forage	0.4
Corn, pop, grain	0.05
Corn, pop, stover	0.4
Corn, sweet, forage	0.4
Corn, sweet, kernel plus cob with husks removed	0.05
Corn, sweet, stover	0.4
Cotton, undelinted seed	0.2
Cucumber	1.0
Dill	5.0
Eggplant	1.0
Lettuce	2.0
Marjoram	5.0
Parsley, dried leaves	20.0
Parsley, leaves	5.0
Pea, blackeyed, seed	2.0
Pepper	2.0
Pimento	2.0
Potato	2.0
Radicchio	5.0
Radish, oriental, roots	2.0
Radish, oriental, tops	2.0
Rutabaga	2.0
Soybean	2.0
Squash, summer	1.0
Squash, winter	1.0
Sweet potato	2.0
Turnip, roots	2.0
Turnip, tops	5.0
Vegetable, brassica, leafy, group 5	5.0
Yam, true, tuber	2.0

■ 6. Section 180.293 is amended by revising paragraph (a)(1) to read as follows:

§ 180.293 Endothall; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of endothall, 7-oxabicyclo [2, 2, 1] heptane-2, 3-dicarboxylic acid and its monomethyl ester in or on the following food commodities:

Commodity	Parts per million
Cotton, undelinted seed	0.1
Fish	0.1
Hop, dried cones	0.1
Potato	0.1
Rice, grain	0.05
Rice, straw	0.05

* * * * *

■ 7. Section 180.317 is revised to read as follows:

§ 180.317 Propyzamide; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide) in or on the following food commodities:

Commodity	Parts per million
Alfalfa, seed	10.0
Animal feed, nongrass, group 18	10.0
Apple	0.1
Artichoke, globe	0.01
Blackberry	0.05
Blueberry	0.05
Boysenberry	0.05
Cattle, fat	0.2
Cattle, kidney	0.4
Cattle, liver	0.4
Cattle, meat	0.02
Cattle, meat byproducts, except kidney and liver	0.02
Egg	0.02
Endive	1.0
Fruit, stone, group 12	0.1
Goat, fat	0.2
Goat, kidney	0.4
Goat, liver	0.4
Goat, meat	0.02
Goat, meat byproducts, except kidney and liver	0.02
Grape	0.1
Hog, fat	0.2
Hog, kidney	0.4
Hog, liver	0.4
Hog, meat	0.02
Hog, meat byproducts, except kidney and liver	0.02
Horse, fat	0.2
Horse, kidney	0.4
Horse, liver	0.4
Horse, meat	0.02
Horse, meat byproducts, except kidney and liver	0.02
Lettuce, head	1.0
Milk	0.02
Pear	0.1
Poultry, fat	0.02
Poultry, liver	0.2
Poultry, meat	0.02
Poultry, meat byproducts, except liver	0.02
Radicchio	2.0
Raspberry	0.05
Sheep, fat	0.2
Sheep, kidney	0.4
Sheep, liver	0.4
Sheep, meat	0.02
Sheep, meat byproducts, except kidney and liver	0.02

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-

propynyl)benzamide) in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Cranberry	0.05	12/31/09

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(m) are established for the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide) in or on the following food commodities:

Commodity	Parts per million
Pea, field, seed	0.05
Rhubarb	0.1

(d) *Indirect or inadvertent residues.* Tolerances are established for the combined indirect or inadvertent residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide) in or on the following food commodities:

Commodity	Parts per million
Grain, cereal, forage, group 16	0.6
Grain, cereal, hay, group 16	0.2
Grain, cereal, straw, group 16 ..	0.3

■ 8. Section 180.345 is amended by revising paragraph (a) to read as follows:

§ 180.345 Ethofumesate; tolerances for residues.

(a) *General.* Tolerances for the combined residues of the herbicide ethofumesate (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate both calculated as parent compound in or on the following food commodities:

Commodity	Parts per million
Beet, garden, roots	0.5
Beet, garden, tops	5.0
Beet, sugar, molasses	0.5
Beet, sugar, refined sugar	0.2
Beet, sugar, roots	0.3
Beet, sugar, tops	4.0
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproducts	0.05
Garlic	0.25

Commodity	Parts per million
Goat, fat	0.05
Goat, meat	0.05
Goat, meat byproducts	0.05
Grass, straw	1.0
Horse, fat	0.05
Horse, meat	0.05
Horse, meat byproducts	0.05
Onion, bulb	0.25
Shallot, bulb	0.25
Shallot, fresh leaves	0.25
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproducts	0.05

* * * * *
 ■ 9. Section 180.378 is revised to read as follows:

§ 180.378 Permethrin; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide cis- and trans-permethrin isomers [cis-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and [trans-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in/ on the following food commodities:

Commodity	Parts per million
Alfalfa, forage	20
Alfalfa, hay	45
Almond	0.05
Almond, hulls	20
Artichoke, globe	5.0
Asparagus	2.0
Avocado	1.0
Broccoli	2.0
Brussels sprouts	1.0
Cabbage	6.0
Cattle, fat	1.5
Cattle, meat	0.10
Cattle, meat byproducts	0.10
Cauliflower	0.5
Cherry, sweet	4.0
Cherry, tart	4.0
Corn, field, forage	50
Corn, field, grain	0.05
Corn, field, stover	30
Corn, pop, grain	0.05
Corn, pop, stover	30
Corn, sweet, forage	50
Corn, sweet, kernel plus cob with husks removed	0.10
Corn, sweet, stover	30
Egg	0.10
Eggplant	0.50
Fruit, pome, group 11	0.05
Garlic, bulb	0.10
Grain, aspirated fractions	0.50
Goat, fat	1.5
Goat, meat	0.10
Goat, meat byproducts	0.10
Hazelnut	0.05
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.05
Horse, fat	1.5

Commodity	Parts per million
Horse, meat	0.10
Horse, meat byproducts	0.10
Horseradish	0.50
Kiwifruit	2.0
Leaf petioles subgroup 4B	5.0
Leafy greens subgroup 4A	20
Lettuce, head	20
Milk, fat (reflecting 0.88 ppm in whole milk)	3.0
Mushroom	5.0
Onion, bulb	0.10
Peach	1.0
Pepper, bell	0.50
Pistachio	0.10
Potato	0.05
Poultry, fat	0.15
Poultry, meat	0.05
Poultry, meat byproducts	0.05
Sheep, fat	1.5
Sheep, meat	0.10
Sheep, meat byproducts	0.10
Soybean, seed	0.05
Spinach	20
Tomato	2.0
Vegetable, cucurbit, group 9 ...	1.5
Walnut	0.05
Watercress	5.0

(b) *Section 18 emergency exemptions.*

[Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(m) are established for the combined residues of the insecticide cis- and trans-permethrin isomers [cis-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and [trans-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in/ on the following food commodities:

Commodity	Parts per million
Collards	15
Grass, forage	15
Grass, hay	15
Papaya	1.0
Turnip, tops	10
Turnip, roots	0.20

(d) *Indirect or inadvertent residues.*

[Reserved]

■ 10. Section 180.406 is amended by revising the table in paragraph (a) to read as follows:

§ 180.406 Dimethipin; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Cattle, meat	0.01
Cattle, meat byproducts	0.01
Cotton, undelinted seed	0.50
Goat, meat	0.01
Goat, meat byproducts	0.01

Commodity	Parts per million
Hog, meat	0.01
Hog, meat byproducts	0.01
Horse, meat	0.01
Horse, meat byproducts	0.01
Sheep, meat	0.01
Sheep, meat byproducts	0.01

* * * * *

■ 11. Section 180.433 is amended by revising the entries for “Bean, dry” and “Bean, snap, succulent” in the table in paragraph (a) to read as follows:

§ 180.433 Fomesafen; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Bean, dry	0.05
Bean, snap, succulent	0.05

* * * * *

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Proposed Rules

Federal Register

Vol. 72, No. 176

Wednesday, September 12, 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 LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210-AB19

Selection of Annuity Providers for Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed regulation.

SUMMARY: This document contains a proposed regulation that, upon adoption, would establish a safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans covered by title I of the Employee Retirement Income Security Act (ERISA). Also appearing in today's **Federal Register** is an interim final rule amending Interpretive Bulletin 95-1 to limit the application of the Bulletin to the selection of annuity providers for defined benefit plans. The proposed regulation, upon adoption, will affect plan sponsors and fiduciaries of individual account plans, and the participants and beneficiaries covered by such plans.

DATES: Written comments on the proposed regulation should be received by the Department of Labor on or before November 13, 2007.

ADDRESSES: To facilitate the receipt and processing of comments, the Department encourages interested persons to submit their comments electronically to www.regulations.gov (follow instructions for submission of comments) or e-ORI@dol.gov. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution

Avenue, NW., Washington, DC 20210. Attention: Annuity Regulation. Comments received will be posted without change, including any personal information provided, to www.regulations.gov and <http://www.dol.gov/ebsa>, and also available for public inspection at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Janet A. Walters or Allison E. Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693-8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

In 1995, the Department issued Interpretive Bulletin 95-1 (29 CFR 2509.95-1) (the IB), providing guidance concerning the fiduciary standards under Part 4 of Title I of ERISA applicable to the selection of annuity providers for purposes of pension plan benefit distributions. In general, the IB makes clear that the selection of an annuity provider in connection with benefit distributions is a fiduciary act governed by the fiduciary standards of section 404(a)(1), including the duty to act prudently and solely in the interest of the plan's participants and beneficiaries. In this regard, the IB provides that plan fiduciaries must take steps calculated to obtain the safest annuity available, unless under the circumstances it would be in the interest of the participants and beneficiaries to do otherwise. The IB also provides that fiduciaries must conduct an objective, thorough and analytical search for purposes of identifying providers from which to purchase annuities and sets forth six factors that should be considered by fiduciaries in evaluating a provider's claims paying ability and creditworthiness.

In Advisory Opinion 2002-14A (Dec. 18, 2002) the Department expressed the view that the general fiduciary principles set forth in the IB with regard to the selection of annuity providers apply equally to defined benefit and defined contribution plans. The opinion

recognized that, the selection of annuity providers by the fiduciary of a defined contribution plan would be governed by section 404(a)(1) and, therefore, such fiduciary, in evaluating claims paying ability and creditworthiness of an annuity provider, should take into account the six factors set forth in 29 CFR 2509.95-1(c).

The Pension Protection Act of 2006 (the PPA) (Pub. L. 109-280, 120 Stat. 780) was enacted on August 17, 2006. Section 625 of the PPA directs the Secretary to issue final regulations within one year of the date of enactment, clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan is not subject to the safest available annuity standard under Interpretive Bulletin 95-1 and is subject to all otherwise applicable fiduciary standards. Consistent with section 625 of the PPA, the Department is amending Interpretive Bulletin 95-1, also published in today's **Federal Register**, to limit its application to defined benefit plans.

Given that the fiduciary standards in Interpretive Bulletin 95-1 would not apply to the selection of an annuity contract as an optional form of distribution from an individual account plan, the Department is proposing the adoption of this regulation that, in the form of a safe harbor, provides guidance concerning the fiduciary considerations attendant to the selection of annuity providers and contracts for purposes of benefit distributions from individual account plans. An overview of the proposed regulation follows.

B. Overview of Proposal

Scope of the Proposal

Paragraph (a) of § 2550.404a-4 provides that the scope of the proposed regulation is to provide guidance concerning ERISA's fiduciary standards applicable to the selection of annuity providers for the purpose of benefit distributions from an individual account plan and benefit distribution options made available to participants and beneficiaries under such plans. Paragraph (a) also includes a reference to § 2509.95-1 for guidance concerning the selection of annuity providers for defined benefit plans.

Application of General Fiduciary Standards

Paragraph (b) of § 2550.404a-4 provides that selecting an annuity provider in connection with a benefit distribution, or a benefit distribution option made available to plan participants and beneficiaries, is a fiduciary act governed by the fiduciary standards of section 404(a)(1) of ERISA, pursuant to which fiduciaries must discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries. Section 404(a)(1)(A) provides that the fiduciary must act for the exclusive purpose of providing benefits to the participants and beneficiaries and defraying reasonable plan administration expenses. Section 404(a)(1)(B) requires a fiduciary to act with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use.

Selection of Annuity Providers and Contracts

Pursuant to paragraph (c) of § 2550.404a-4, a fiduciary will have acted prudently in selecting an annuity provider and contract for purposes of benefit distributions, or benefit distribution options made available to participants and beneficiaries under the plan, if the conditions of that paragraph are satisfied. The specific conditions of this safe harbor are set forth in paragraph (c)(1)(A)-(F) of the proposal.

Consistent with the requirements applicable to the selection of service providers generally, paragraph (c)(1)(A) requires the fiduciary to engage in an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities. Any such process must avoid self dealing, conflicts of interest or other improper influence, and should, to the extent feasible, involve consideration of competing annuity providers.

Paragraph (c)(1)(B) requires that the fiduciary responsible for the selection of the annuity provider appropriately determine whether he or she has the expertise or knowledge to meaningfully evaluate the annuity provider consistent with the requirements of the regulation. In those instances where the fiduciary appropriately determines that he or she has such expertise or knowledge, the fiduciary is not required to engage an independent expert (i.e., an expert independent of the annuity provider) to evaluate the annuity provider.

Paragraph (c)(1)(C) requires that the fiduciary appropriately consider

information sufficient to assess the ability of the annuity provider to make all future payments under the annuity contract. Paragraph (c)(1)(D) requires that the fiduciary appropriately consider the cost of the annuity contract in relation to the benefits and administrative services to be provided under the contract. Paragraph (c)(1)(E) requires that the fiduciary appropriately conclude that, at the time of the selection, the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the benefits and services to be provided under the contract.

Paragraph (c)(1)(F) requires that, for annuity providers selected to provide multiple annuities over time, the fiduciary periodically review the appropriateness of the conclusion described in paragraph (c)(1)(E), taking into account the factors described in paragraph (c)(1)(C) and (D). However, paragraph (c)(1)(F) does not require the fiduciary to review the appropriateness of an annuity provider with respect to an annuity contract after it is purchased for an individual participant or beneficiary.

Paragraph (c)(2) provides additional guidance regarding how the fiduciary can meet the requirements of paragraphs (c)(1)(C) and (D). For example, paragraph (c)(2)(C) requires consideration of the annuity provider's experience and financial expertise. Paragraph (c)(2)(D) requires consideration of the annuity provider's level of capital, surplus, and reserves available to make payments under the annuity contract. Paragraph (c)(2)(E) requires that the fiduciary consider whether an annuity provider's rating (as determined by an appropriate rating service(s)) demonstrate or raise questions regarding the provider's ability to make future payments under the annuity contract. And, paragraph (c)(2)(G) requires that the fiduciary consider the availability of additional protections through state guaranty associations and the extent of their guarantees. In this regard, the type of information that the fiduciary should consider is information that is available to the public and easily accessible through such associations as well as state insurance departments. If known facts call into question the ability of a state association offering guarantees to meet its obligations under the guarantee, it would be incumbent on the fiduciary to weigh that information when selecting an annuity provider.

Lastly, paragraph (c)(2)(H) requires consideration of any other information

that the fiduciary knows or should know would be relevant to an evaluation of paragraphs (c)(1)(C) and (D). Such information would include that information which may not otherwise be described in paragraph (c)(2) or information surrounding events which, because of timing, may not yet have been reflected in those factors. For example, if a fiduciary learned through public indicators, such as the news media, that a corporate event affecting an annuity provider could call into serious question the provider's ability to make future payments under its contracts, or if the provider publicly stated that it was unlikely to survive the event in a manner that would ensure its ability to meet its financial commitments, the fiduciary would have an obligation to consider that information in evaluating paragraphs (c)(1)(C) and (D).

C. Request for Comments

The Department invites comments from interested persons on all aspects of the proposed regulation. To facilitate the receipt and processing of comments, EBSA encourages interested persons to submit their comments electronically to www.regulations.gov (follow instructions for the submission of comments) or e-ORI@dol.gov. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Annuity Regulation. All comments will be available to the public, without charge, online at www.regulations.gov and <http://www.dol.gov/ebsa>, and at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC, 20210 from 8 a.m. to 4:30 p.m. (Monday-Friday).

D. Effective Date

The Department proposes to make the regulation effective 60 days after the date of publication of the final rule in the **Federal Register**.

E. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to

review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a “significant regulatory action” as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as “economically significant”); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. For purposes of Executive Order 12866, the Department has determined that it is appropriate to review the proposed regulation contained in this document, which, upon adoption, will provide, in the form of a safe harbor, standards for the selection of annuity providers for fiduciaries of individual account plans, in conjunction with the amendment to Interpretive Bulletin 95–1, also appearing in today’s **Federal Register**, that, consistent with Congressional intent, establishes that the standards of the Bulletin no longer apply to individual account plans. These regulatory actions together implement section 625 of the Pension Protection Act of 2006. Having considered these regulatory actions in the aggregate, the Department believes that these actions are not economically significant within the meaning of section 3(f)(1) the Executive Order. The actions, however, have been determined to be significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of the potential benefits and costs. As elaborated below, the Department believes that the benefits of the regulation will justify its costs.

There is growing concern that, with increases in life expectancy, many retirees may outlive their retirement savings. In this environment, annuities offer one means by which retirees may ensure a lifetime income.¹ While a

number of possible factors may influence a plan sponsor’s decision not to offer an annuity distribution option as part of its plan, an often cited factor is concern about the fiduciary liability attendant to selecting the “safest available” annuity, as required by Interpretive Bulletin 95–1.² The Department believes that many of those plan sponsors that viewed fiduciary liability attendant to compliance with the “safest available” annuity standard as the primary impediment to including an annuity option in their plan will be more willing to consider the addition of such an option with the amendment of Interpretive Bulletin 95–1 and the establishment of fiduciary standards, in the form of a safe harbor, for the prudent selection of annuity providers for individual account plans. Providing such a safe harbor to plan sponsors is unlikely to discourage plans that currently offer an annuity option from continuing to do so, and it may encourage more plans to offer an annuity alternative. This will give more participants the opportunity to annuitize their retirement savings, while not impeding them from choosing other distribution options.

The proposed regulation could affect demand for annuities in two ways: by lowering the price of annuities, and by encouraging more plans to offer annuities by providing a safe harbor. Current research on annuities suggests that individual demand is largely price inelastic, which implies that a lower price would not result in a significant increase in individuals choosing an annuity. Holding the propensity of eligible individuals electing annuities constant but increasing the number of plans offering annuities, however, would result in an increase in the total number of individuals electing annuities.

The Department estimates that in response to the safe harbor, the share of participants offered an annuity option for their withdrawal would increase by 1 percentage point, from 25 to 26

Plans, at http://www.dol.gov/ebsa/publications/AC_1105A_report.html.

² Such factors may include burdens attendant to administering qualified joint and survivor annuity options and spousal consent requirements, complexity of communications, need for participant education, lack of participant interest. See GAO–03–810 *Private Pensions: Participants Need Information on Risks They Face in Managing Pension Assets at and during Retirement* (July 2003) at <http://www.gao.gov/htext/d03810.html>. Also see *Report of Working Group on Retirement Distributions & Options* (November 2005), Advisory Council on Employee Welfare and Pension Benefit Plans, at http://www.dol.gov/ebsa/publications/AC_1105A_report.html.

percent,³ while the share of eligible participants electing an annuity would remain at 6 percent.⁴ The resulting total amount transferred into annuities by DC participants annually would be \$2.41 billion, \$93 million of which would be attributable to the regulation.⁵ While the estimated annual effect of this regulatory action is not considered “economically significant,” it is sensitive to assumptions regarding average separation rates, election rates and account balances.⁶ The Department invites comments from interested persons on the appropriateness of these assumptions.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. The Department has considered the likely impact of the proposed regulation on small entities in connection with its assessment under Executive Order 12866, described above, and believes this rule will not have a significant impact on a substantial number of small entities. See foregoing analysis.

³ Form 5500 data reports the number of participants in a DC plan that use insurance for at least one method of benefit payouts. This information was used to estimate the share of participants currently offered an annuity option for withdrawal, 25 percent in 2003.

⁴ Hewitt Associates. “Survey Findings: Trends and Experiences in 401(k) Plans, 2005”.

⁵ Estimate based on the average total balance of DC withdrawals as reported in Fidelity Investments’, “Building Futures: How Workplace Savings are Shaping the Future of Retirement,” A Report on Corporate Defined Contribution Plans: 2006.

⁶ The reported analysis used separation rates reported in, Poterba, James, Steven Venti and David A. Wise. “Demographic Change, Retirement Saving and Financial Market Returns: Part I,” December 19, 2005. An alternative analysis, using withdrawal rates reported in Fidelity Investments’, “Building Futures: How Workplace Savings are Shaping the Future of Retirement,” A Report on Corporate Defined Contribution Plans: 2006 generated an increase of \$158 million.

¹ See GAO–03–810 *Private Pensions: Participants Need Information on Risks They Face in Managing Pension Assets at and during Retirement* (July 2003) at <http://www.gao.gov/htext/d03810.html>. Also see *Report of Working Group on Retirement Distributions & Options* (November 2005), Advisory Council on Employee Welfare and Pension Benefit

Paperwork Reduction Act

This rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. § 301 et seq.) because it does not contain "collection of information" requirements as defined in 44 U.S.C. § 3502(3). Accordingly, this proposed regulation is not being submitted to the OMB for review under the Paperwork Reduction Act.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the proposed regulation does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding \$100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, 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 regulation does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the proposed regulation do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Annuities, Employee benefit plans, Fiduciaries, Pensions.

For the reasons set forth in the preamble, the Department proposes to amend Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; sec. 657, Pub. L. 107-16, 115 Stat. 38; and Secretary of Labor's Order No. 1-2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b-1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c-1 also issued under 29 U.S.C. 1101. Sections 2550.404c-1 and 2550.404c-5 also issued under 29 U.S.C. 1104. Sec. 2550.407c-3 also issued under 29 U.S.C. 1107. Sec. 2550.408b-1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412-1 also issued under 29 U.S.C. 1112. Sec. 2550.404a-4 also issued under sec. 625, Pub. L. 109-280, 120 Stat. 780.

2. Add § 2550.404a-4 to read as follows:

§ 2550.404a-4 Selection of annuity providers for individual account plans.

(a) *Scope.* This section provides guidance concerning the fiduciary standards under part 4 of title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1104-1114, applicable to the selection of an annuity provider for the purpose of benefit distributions from an individual account plan or benefit distribution options made available to participants and beneficiaries under such a plan. For guidance concerning the selection of an annuity provider for defined benefit plans see 29 CFR 2509.95-1.

(b) *In general.* When an individual account plan purchases an annuity from an insurer as a distribution of benefits to a participant or beneficiary, the plan's liability for the payment of those benefits is transferred to the annuity provider. The selection of an annuity provider in connection with a benefit distribution, or a benefit distribution option made available to participants and beneficiaries under the plan, is governed by the fiduciary standards of section 404(a)(1) of ERISA. Pursuant to ERISA section 404(a)(1), fiduciaries must discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries. Section 404(a)(1)(A) provides that the fiduciary must act for the exclusive purpose of providing benefits to the participants and beneficiaries and defraying reasonable plan administration expenses. In addition, section 404(a)(1)(B) requires a fiduciary to act with the care, skill, prudence and

diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use.

(c) *Selection of annuity providers and contracts.* (1) With regard to a fiduciary's selection of an annuity provider for purposes of benefit distributions from an individual account plan or benefit distribution options made available to participants and beneficiaries under such a plan, the requirements of section 404(a)(1)(B) of ERISA are satisfied if the fiduciary:

(i) Engages in an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities;

(ii) Appropriately determines either that the fiduciary had, at the time of the selection, the appropriate expertise to evaluate the selection or that the advice of a qualified, independent expert was necessary;

(iii) Gives appropriate consideration to information sufficient to assess the ability of the annuity provider to make all future payments under the annuity contract;

(iv) Appropriately considers the cost of the annuity contract in relation to the benefits and administrative services to be provided under such contract;

(v) Appropriately concludes that, at the time of the selection, the annuity provider is financially able to make all future payments under the annuity contract and the cost of the annuity contract is reasonable in relation to the benefits and services to be provided under the contract; and

(vi) In the case of an annuity provider selected to provide multiple contracts over time, periodically reviews the appropriateness of the conclusion described in paragraph (c)(1)(v) of this section, taking into account the factors described in paragraph (c)(1)(iii) and (iv) of this section. For purposes of this paragraph, a fiduciary is not required to review the appropriateness of an annuity provider with respect to an annuity contract purchased for an individual participant or beneficiary.

(2) For purposes of paragraphs (c)(1)(iii) and (iv) of this section, a fiduciary shall consider information pertaining to the following:

(i) The ability of the annuity provider to administer the payments of benefits under the annuity to the participants and beneficiaries and to perform any other services in connection with the annuity, if applicable;

(ii) The cost of the annuity contract in relation to the benefits and administrative services to be provided under such contract, taking into account

the amount and nature of any fees and commissions;

(iii) The annuity provider's experience and financial expertise in providing annuities of the type being selected or offered;

(iv) The annuity provider's level of capital, surplus and reserves available to make payments under the annuity contract;

(v) The annuity provider's ratings by insurance ratings services. Consideration should be given to whether an annuity provider's ratings demonstrate or raise questions regarding the provider's ability to make future payments under the annuity contract;

(vi) The structure of the annuity contract and benefit guarantees provided, and the use of separate accounts to underwrite the provider's benefit obligations;

(vii) The availability and extent of additional protection through state guaranty associations; and

(viii) Any other information that the fiduciary knows or should know would be relevant to an evaluation of paragraphs (c)(1)(iii) and (iv) of this section.

Signed at Washington, DC, this 31st day of August, 2007.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7-17743 Filed 9-11-07; 8:45 am]

BILLING CODE 4510-29-P

POSTAL SERVICE

39 CFR Part 111

Revisions to DMM 604.9.2 Postage and Fee Refunds

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) § 604.9.2 through 604.9.3.6. The proposed revision would establish a minimum for refund of unused postage value in postage meters and PC Postage® accounts; provide a consistent time frame for submission of physical refunds for both PC Postage and postage meter indicia to 60 days; would specify procedures and a time frame for refund of items bearing a Product Identification Code (PIC) produced by a PC Postage system that must be processed electronically; and would establish refund procedures for undated PC Postage indicia.

DATES: Submit comments on or before October 12, 2007.

ADDRESSES: Mail or deliver written comments to the Manager, Postage Technology Management, Postal Service, 475 L'Enfant Plaza SW., NB Suite 4200, Washington, DC 20260-4200. Written comments may also be submitted via fax to 202-268-4225. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postage Technology Management office.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Lord, Manager, Postage Technology Management, Postal Service™, at 202-268-4281.

SUPPLEMENTARY INFORMATION: The proposed revision would establish a \$5 minimum for refund of unused postage value in postage meters and PC postage accounts; would provide 60 days as a consistent time frame for submission of physical refunds for both PC Postage and postage meter indicia; would specify procedures and a 10-day time frame for refund of items bearing a Product Identification Code (PIC) produced by a PC Postage system that must be processed electronically; and would establish refund procedures for unused, undated PC Postage indicia.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service proposes to amend 39 CFR part 111 as set forth below:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95-452, as amended); 5 U.S.C. App. 3.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

* * * * *

9.0 Refunds and Exchanges

* * * * *

9.2 Postage and Fee Refunds

* * * * *

9.2.8 Ruling on Refund Request

Refund requests are decided based on the specific type of postage or mailing:

* * * * *

[Revise items b and c by changing "licensing post office" to "Local Post Office" and changing "licensee" to "authorized user" as follows:]

b. Dated metered postage, except for PC Postage systems, under 9.3. The postmaster at the local Post Office grants or denies requests for refunds for dated metered postage under 9.3. The authorized user may appeal an adverse ruling within 30 days through the manager, Postage Technology Management, USPS Headquarters (see 608.8.0 for address), who issues the final agency decision. The original meter indicia must be submitted with the appeal.

c. Undated metered postage under 9.3. The manager, business mail entry at the district Post Office overseeing the mailer's local Post Office, or designee authorized in writing, grants or denies requests for refunds for undated metered postage under 9.3. The customer may appeal a decision on undated metered postage within 30 days through the manager, business mail entry, or designee, to the PCSC manager who issues the final agency decision. The original meter indicia must be submitted with the appeal.

[Revise item d as follows:]

d. PC Postage systems under 9.3. The system provider grants or denies a request for a refund for indicia printed by PC Postage systems under 9.3 using established USPS criteria. The customer may appeal an adverse ruling within 30 days through the manager, Postage Technology Management, USPS Headquarters, who issues the final agency decision. The original indicia must be submitted with the appeal.

* * * * *

9.3 Refund Request for Postage Evidencing Systems and Metered Postage

9.3.1 Unused Postage Value in Postage Evidencing Systems

[Revise 9.3.1 to restrict refunds to amounts of \$5 or more as follows:]

The unused postage value remaining in a postage evidencing system when withdrawn from service may be refunded, depending upon the circumstance and the ability of the USPS to make a responsible determination of the actual or approximate amount of the unused postage value. If the postage evidencing system is withdrawn because of faulty operation, a final postage adjustment or refund will be withheld pending the system provider's report of the cause to the USPS and the USPS determination of whether or not a refund is appropriate and, if so, the amount of the refund. No refund is given for faulty operation caused by the authorized user. When a postage evidencing system that is damaged by fire, flood, or similar disaster is returned to the provider, postage may be refunded or transferred when the registers are legible and accurate, or the register values can be reconstructed by the provider based on adequate supporting documentation. When the damaged system is not available for return, postage may be refunded or transferred only if the provider can accurately determine the remaining postage value based on adequate supporting documentation. The authorized user may be required to provide a statement on the cause of the damage and to attest that there has not been reimbursement by insurance, or otherwise, and that the authorized user will not seek such reimbursement. Refunds for unused postage value are granted for postage evidencing systems specified in 4.0 in accordance with the following procedures:

a. All postage evidencing systems except for PC Postage systems. Authorized users must notify their provider to withdraw the system and to refund any unused postage value remaining on their system or account. The postage evidencing system must be examined to verify the amount before any funds are cleared from the meter. Based on what is found, a refund or credit is initiated for unused postage value, or additional money is collected to pay for postage value used. The provider forwards the refund request to the USPS for payment or may credit the amount to the authorized users account. Refunds of unused postage value remaining in a postage evidencing

system less than \$5 will not be paid by the USPS.

b. PC Postage systems. Authorized users must notify their provider to withdraw the system and to refund any unused postage value remaining in their account. The provider refunds the unused postage value remaining on the user's system on behalf of the USPS. Refunds of unused postage value remaining in a postage evidencing system less than \$5 will not be paid by the USPS.

9.3.2 Unused, Dated Postage Evidencing System Indicia, Except PC Postage Indicia

[Revise 9.3.2 as follows:]

Unused, dated postage meter indicia are considered for refund only if complete, legible, and valid. PC Postage indicia refunds are processed under 9.3.3. All other metered postage refund requests must be submitted as follows:

a. Authorized users must submit the request to their local Post Office. The refund request must include proof that the person or entity requesting the refund is the authorized user of the postage meter that printed the indicia. Acceptable proof includes a copy of the lease, rental agreement, or contract.

b. Authorized users must include the items bearing the unused postage with their request to their local Post Office. The items must be sorted by meter used and then by postage value shown in the indicia, and must be properly faced and bundled in groups of 100 identical items when quantities allow. The request is processed by the USPS. The postmaster approves or denies the refund request.

c. Authorized users must submit the refund request within 60 days of the date(s) shown in the indicia.

d. When unused metered postage is affixed to a mailpiece, the refund request must be submitted with the entire envelope or wrapper. For those items where the postage is affixed to a large container (i.e. cardboard box), a sufficient portion of the container with the postage affixed must be included to validate that the item was never deposited with the USPS. The unused metered postage must not be removed from the mailpiece once applied.

e. Indicia printed on labels or tapes not adhered to wrappers or envelopes must be submitted loose and must not be stapled together or attached to any paper or other medium. However, self-adhesive labels printed without a backing may be submitted on a plain sheet of paper.

f. If a part of one indicium is printed on one envelope or card and the remaining part on one or more, the

envelopes or cards must be fastened together to show that they represent one indicium.

g. Refunds are allowable for indicia on metered reply envelopes only when it is obvious that an incorrect amount of postage was printed on them.

h. The refund request must be submitted on PS Form 3533. A separate PS Form 3533 must be completed for each meter for which a refund is requested. All identifying information and all sections related to the refund request must be completed. Charges for processing a refund request for unused, dated meter indicia are as follows:

1. If the total face value of the indicia is \$350 or less, the amount refunded is 90% of the face value. USPS may process the refund payment locally via a no-fee postal money order.

2. If the total face value is more than \$350, the amount refunded is reduced by a figure representing \$35 per hour, or fraction thereof, for the actual hours to process the refund, with a minimum charge of \$35. The postmaster will submit the approved PS Form 3533 to the USPS Imaging and Scanning Center for payment processing through the Accounting Service Center.

9.3.3 Unused, Dated PC Postage Indicia

[Revise 9.3.3 as follows:]

Unused, dated PC Postage indicia are considered for refund only if complete, legible, and valid. The refund request must be submitted as follows:

a. Only authorized PC Postage users may request the refund. Users must submit the request to their system provider. The request is processed by the provider, not the USPS.

b. Requests for refund of PC Postage indicia that contain a valid Postal Identification Code (PIC) must be submitted by authorized users to their provider electronically in accordance with procedures available from their provider. Valid PICs include any form of Delivery Confirmation or Signature Confirmation service, Express Mail service or Confirm[®] Code. Authorized users must initiate requests for electronic refunds within ten (10) days of printing the indicia. Refunds for postage associated with a PIC may only be submitted electronically. Physical submissions are not permitted.

c. Requests for refund of PC Postage indicia which do not have an associated PIC must be physically submitted by authorized users to their provider, along with the items bearing the unused postage, in accordance with procedures available from their provider. Authorized users must submit the refund request within sixty 60 days of

the date(s) shown in the indicia. The refund request must be submitted as required in 9.3.2d. through 9.3.2g.

d. The provider may, at its discretion, charge for processing a refund request.

[Revise title, introductory text, and items a and c of 9.3.4 as follows:]

9.3.4 Unused, Undated Metered Postage

Unused, undated postage evidencing system indicia are considered for refund only if complete, legible, and valid. The refund request must be submitted as follows:

a. Only the authorized user or the commercial entity that prepared the mailing for the authorized user may request the refund. The request must include a letter signed by the authorized user or the commercial entity that prepared the mailing explaining why the mailpieces were not mailed.

* * * * *

c. The authorized user, or the commercial entity that prepared the mailing for the authorized user, must submit the request, along with the items bearing the unused postage and the required documentation, to the manager, business mail entry at the district Post Office overseeing the mailer's local Post Office, or to a designee authorized in writing. The manager or designee approves or denies the refund request.

* * * * *

[Re number 9.3.5 as new 9.3.6. Add new 9.3.5 to read as follows:]

9.3.5 Unused, Undated PC Postage Indicia

Refunds will not normally be provided for valid, undated, serialized PC Postage indicia containing commonly used postage values. If the authorized user believes there are extraordinary circumstances, requests for such refunds must be made by the authorized user in accordance with the procedures outlined in 9.3.3.c along with a detailed description of the extraordinary circumstances. Requests will be considered by the provider on a case by case basis.

9.3.6 Ineligible Metered Postage Items

The following metered postage items are ineligible for refunds:

* * * * *

[Revise item d of renumbered 9.3.6 to change "licensing post office" to "Local Post Office" as follows:]

d. Indicia lacking identification of the local Post Office or other required information.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E7-18035 Filed 9-11-07; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2005-NC-0004-200704(b); FRL-8465-5]

Approval and Promulgation of Implementation Plans; North Carolina: Mecklenburg County Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the North Carolina State Implementation Plan (SIP). On February 16, 2005, the North Carolina Department of Environment and Natural Resources submitted revisions to the Mecklenburg County Air Pollution Control Ordinance (MCAPCO), to be incorporated into the Mecklenburg County portion of the North Carolina SIP. The revisions include changes to MCAPCO 2.0902, "Applicability," and 2.0933, "Petroleum Liquid Storage in External Floating Roof Tanks." These changes were made to maintain consistency with State and federal regulations, and are part of Mecklenburg County's strategy to attain and maintain the 8-hour ozone National Ambient Air Quality Standard, by reducing precursors to ozone. In the Final Rules Section of this **Federal Register**, the EPA is approving North Carolina's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before October 12, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2005-NC-0004, by one of the following methods:

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

2. *E-mail*: hou.james@epa.gov.

3. *Fax*: (404) 562-9019.

4. *Mail*: "EPA-R04-OAR-2005-NC-0004," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays. Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8965. Mr. Hou can also be reached via electronic mail at hou.james@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: August 27, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E7-17780 Filed 9-11-07; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA-R03-OAR-2007-0479; FRL-8466-1]

**Approval and Promulgation of Air
Quality Implementation Plans; Virginia;
Amendments Extending the
Applicability of Four Consumer and
Commercial Product Regulations to
the Fredericksburg Volatile Organic
Compound (VOC) Emissions Control
Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision extends the applicability of four consumer and commercial product regulations—Portable Fuel Container Spillage, Mobile Equipment Repair and Refinishing Operations, Architectural and Industrial Maintenance Coatings, and Consumer Products—to the Fredericksburg VOC Emissions Control Area. These amendments are necessary to implement VOC contingency measures within the Fredericksburg VOC Emissions Control Area. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before October 12, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0479 by one of the following methods:

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

B. *E-mail:* powers.marilyn@epa.gov.

C. *Mail:* EPA-R03-OAR-2007-0479, Marilyn Powers, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2007-0479. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814-2034 or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: On May 14, 2007, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its SIP. This SIP revision consists of amendments to 9 VAC 5 Chapter 20, Part I, Administrative, 9 VAC 5-20-21, Documents Incorporated by Reference, and amendments to 9 VAC 5 Chapter 40, Part II, Emission Standards, Articles 42, 48, 49, and 50.

I. Background

Chapter 40 of Virginia's Regulations for the Control and Abatement of Air Pollution contains a number of rules used to enforce control measures designed to attain and maintain the ozone air quality standard. The geographic applicability of these rules is defined by establishing VOC and NO_x emissions control areas in a list located in 9 VAC 5-20-206. The Commonwealth of Virginia's regulations establish VOC and nitrogen oxide (NO_x) emissions control areas to provide the legal mechanism to define the geographic areas in which Virginia implements control measures to attain and maintain the air quality standards for ozone. The emissions control areas may or may not coincide with the nonattainment areas found in 9 VAC 5-20-204, depending upon the necessity of the planning requirements. Most of the Chapter 40 regulations automatically apply within all of the VOC emissions control areas. Some Chapter 40 rules (Articles 4, 36, 37, and 53) have provisions that apply only to certain existing VOC and NO_x emission control areas. Other Chapter 40 regulations were originally adopted to apply only within certain emission control areas.

The original ozone air quality standard was a 1-hour standard. Three VOC and NO_x emission control areas, Northern Virginia, Hampton Roads, and Richmond, were established in Virginia in order to implement control measures to attain the 1-hour ozone air quality standard. On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. On April 30, 2004 (69 FR 23858), EPA designated and classified areas for the 8-hour ozone national ambient air quality standards (NAAQS). For most areas, these designations became effective June 15, 2004. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based upon the air quality data for the three years of 2001-2003. These were the most recent three years of data available at the time EPA designated 8-hour areas. The 8-hour standard replaced the 1-hour standard on June 15, 2005 (69 FR 23996). Accordingly, the Virginia State Air Pollution Control Board promulgated the State 8-hour ozone nonattainment areas that took effect on August 25, 2004. In order to implement control measures to attain and maintain the air quality standards for ozone, the Board proposed to expand the VOC and NO_x emissions control areas in 9 VAC 5-20-206, and extend

the geographic applicability of the VOC and NO_x regulatory rules in Chapter 40 of the regulations into the new 8-hour nonattainment areas. On March 2, 2007 (72 FR 9441), EPA published a final rulemaking which established a new Fredericksburg VOC Emissions Control Area, consisting of Spotsylvania County and Fredericksburg City, and expanded the Richmond and Hampton Roads VOC and NO_x Emission Control Areas. On December 23, 2005 (70 FR 76165) EPA redesignated the 8-hour Fredericksburg nonattainment area to attainment for the 8-hour NAAQS. This revision consists of regulation amendments that extend the applicability of four consumer and commercial product regulations into the new Fredericksburg VOC Emissions Control Area. These amendments are necessary to implement VOC contingency measures of the maintenance plan for the Fredericksburg VOC Emissions Control Area.

II. Summary of the SIP Revision

The May 14, 2007 SIP revision contains amendments to 9 VAC 5–20–21, which incorporate by reference, two additional test methods and procedures needed for 9 VAC 5 Chapter 40, Article 49, Architectural and Industrial Maintenance Coatings. These are the American Society for Testing and Materials (ASTM) D3912–95, “Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants;” and the American Society for Testing and Materials (ASTM) D 4082–02, “Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants.”

The May 14, 2007 revision also contains regulation amendments to 9 VAC 5 Chapter 40 that extend the applicability of four consumer and commercial product regulations into the new Fredericksburg VOC Emissions Control Area established in 9 VAC 5–20–206 (March 2, 2007, 72 FR 9441). These regulations presently apply only in the Northern Virginia VOC Emissions Control Area and were based on the Ozone Transport Commission (OTC) model rules. The OTC developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing those model rules. These amendments to Chapter 40 are discussed below.

(1) Emission Standards for Portable Fuel Container Spillage, Article 42

Virginia's Portable Fuel Container Spillage regulation is being amended to apply within the new Fredericksburg VOC Emissions Control Area. At the

present time this regulation applies only to sources located in the Northern Virginia VOC Emissions Control Area (June 8, 2004, 69 FR 31893). The provisions of this regulation apply to any source or person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts in the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5–20–206. The regulation does not apply to any portable fuel container or spout manufactured for shipment, sale and use outside of the Northern Virginia and Fredericksburg VOC Emission Control Areas. The regulation requires each portable fuel container or spout sold in the Northern Virginia and Fredericksburg VOC Emission Control Areas to meet the following requirements: (1) Have an automatic shut-off and closure device; (2) contain one opening for both filling and pouring; (3) meet minimal fuel flow rate based on nominal capacity; (4) meet a permeation standard; and (5) have a manufacturer's warranty against defects. The regulation includes exemptions, standards, testing procedures, recordkeeping, and administrative requirements. Compliance with the provisions of this regulation is required no later than January 1, 2008 in the Fredericksburg VOC Emissions Control Area.

(2) Emission Standards for Mobile Equipment Repair and Refinishing, Article 48

Virginia's Mobile Equipment Repair and Refinishing regulation is being amended to apply within the new Fredericksburg VOC Emissions Control Area. At the present time, this regulation applies only to sources located in the Northern Virginia VOC Emissions Control Area (June 24, 2004, 69 FR 35253). The provisions of this regulation apply to each mobile equipment repair and refinishing operation located in the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5–20–206. Certain provisions also apply to each person providing or selling affected coatings. The provisions of this regulation do not apply if the mobile equipment repair and refinishing operation is subject to Article 28 (9 VAC 5–40–3860 et seq.) of Chapter 40, Emission Standards for Automobile and Light Duty Truck Application Systems, or Article 34 (9 VAC 5–40–4760 et seq.) of Chapter 40, Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems. The provisions of this regulation also do not apply to persons applying the coatings

who do not receive compensation for the application of the coatings, and to mobile equipment repair and refinishing operations that use coatings required to meet military specifications (MILSPEC) where no other existing coating can be used that meets the provisions of this regulation. Also included in the regulation are definitions, standards for VOCs, compliance, test methods and procedures, monitoring, and reporting and recordkeeping requirements. Compliance with the provisions of this regulation is required no later than January 1, 2008 in the Fredericksburg VOC Emissions Control Area.

(3) Emission Standards for Architectural and Industrial Maintenance Coatings, Article 49

Virginia's Architectural and Industrial Maintenance (AIM) Coatings regulation is being amended to apply within the new Fredericksburg VOC Emissions Control Area. At the present time, this regulation applies only to sources located in the Northern Virginia VOC Emissions Control Area (May 12, 2005, 70 FR 24970). This regulation applies to any person who supplies, sells, offers for sale, or manufactures any architectural coating for use, as well as any person who applies or solicits the application of any architectural coating, located in the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5–20–206. The provisions of this regulation do not apply to the following: (1) Any architectural coating that is sold or manufactured for use exclusively outside of the Northern Virginia and Fredericksburg VOC Emission Control Areas, or for shipment to other manufacturers for reformulation or repackaging; (2) any aerosol coating product; or (3) any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less. The regulation is also being amended to add standards and definitions for six new coating categories: calcimine recoaters, conversion varnishes, concrete surface retarder, impacted immersion coatings; nuclear coatings; and thermoplastic rubber coating and mastic. These new coatings are listed in the Federal AIM regulation (63 FR 48848, September 11, 1998). Virginia's regulation sets specific VOC content limits in grams per liter for architectural and industrial maintenance coatings, and contains administrative requirements for labeling and reporting. There are a number of test methods that would be used to demonstrate compliance with this rule. Some of these test methods include those promulgated by EPA and published by the South Coast and Bay

Area Air Quality Management Districts of California, as well as the American Society for Testing and Materials. The test methods used to test coatings must be the most current approved method at the time testing is performed. Compliance with the provisions of this regulation is required no later than January 1, 2008 in the Fredericksburg VOC Emissions Control Area.

(4) Emission Standards for Consumer Products, Article 50

Virginia's Consumer Products Regulation is being amended to apply within the new Fredericksburg VOC Emissions Control Area. At the present time, this regulation applies only to sources located in the Northern Virginia VOC Emissions Control Area (January 30, 2007, 72 FR 4207). The rule applies to a person who sells, supplies, offers for sale, or manufactures consumer products that contain VOCs as defined in 9 VAC 5-10-20 throughout the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5-20-206. This regulation limits VOC emissions from consumer products such as adhesives, adhesive removers, aerosol products, air fresheners, antiperspirants and deodorants, facial toners and astringents, waxes and polishes (for cars and floors, etc.), tile cleaners, tar removers, bug sprays, rug cleaners, charcoal lighter fluid, disinfectants, cosmetics, and soaps. This regulation does not apply to any consumer product manufactured in the Northern Virginia and Fredericksburg VOC Emissions Control Areas designated in 9 VAC 5-40-7240 for shipment and use outside of these areas. The provisions also do not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards specified in 9 VAC 5-40-7270 A, as long as the manufacturer or distributor can demonstrate that both the consumer product is intended for shipment and use outside of the Northern Virginia and Fredericksburg VOC Emission Control Areas, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to those applicable VOC control areas. The regulation sets specific VOC content limits in percent VOCs by weight for consumer products. Exemptions from the VOC content limits are listed in the rule. Also included in the regulation are definitions, innovative products, standards and exemptions, requirements for waiver requests, administrative requirements for labeling and reporting, test methods for demonstrating

compliance, compliance schedules, alternative control plans, monitoring, and reporting and recordkeeping requirements. Compliance with the provisions of this regulation is required no later than January 1, 2008 in the Fredericksburg VOC Emissions Control Area. Article 49 is also being amended to revise the definition of "Automotive windshield washer fluid," to allow the higher VOC automotive windshield washer fluid standards to also be applied to some manual automotive windshield washing systems so that they may be used in winter.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental

programs in a manner that is no less stringent than their Federal counterparts. * * * The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the Virginia SIP revision submitted on May 14, 2007 for regulation amendments to 9 VAC 5 Chapter 20 that incorporate by reference test methods and procedures needed for 9 VAC 5 Chapter 40, Article 49, Emission Standards for Architectural and Industrial Maintenance Coatings, and regulation amendments to Chapter 40 that extend the applicability of four consumer and commercial product regulations into the new Fredericksburg VOC Emissions

Control Area. These amendments are necessary to implement VOC contingency measures within the Fredericksburg VOC Emissions Control Area. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

This proposed rule, extending the applicability of four consumer and commercial product regulations into the new Fredericksburg VOC Emissions Control Area, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 30, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7-17977 Filed 9-11-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2005-SC-0004-200735; FRL-8466-3]

Approval and Promulgation of Implementation Plans; South Carolina; Prevention of Significant Deterioration and Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: EPA is proposing to partially approve, disapprove, and conditionally approve specific portions of the proposed revisions to the South Carolina State Implementation Plan (SIP) submitted by the State of South Carolina on July 1, 2005. The proposed revisions modify South Carolina’s Prevention of Significant Deterioration (PSD) program and provide for a new Nonattainment New Source Review (NNSR) program to be incorporated into the SIP. EPA’s proposal to partially approve and disapprove certain portions of the July 1, 2005, SIP submittal is consistent with section 110(k)(3) of the Clean Air Act (CAA). EPA’s proposal to conditionally approve other portions of the July 1, 2005, SIP submittal is consistent with section 110(k)(4) of the CAA. As part of the conditional approval, which applies only to the NNSR program, South Carolina will have twelve months from the date of EPA’s final conditional approval of the SIP revisions in which to revise its NNSR rules, as described herein, to be consistent with existing federal law.

In addition to the conditional approval of the NNSR program, EPA is proposing to approve one provision of South Carolina’s minor source permitting program, partially approve South Carolina’s PSD program, and disapprove two elements of South Carolina’s PSD and NNSR rules that relate to provisions that were vacated from the federal program by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) on June 24, 2005. The two elements vacated from the federal rules pertain to pollution control projects (PCPs) and clean units. These elements exist in the South Carolina rules in both the PSD and NNSR programs, and all references to PCPs and clean units in both programs are being proposed for disapproval. As part of the conditional approval of South Carolina’s NNSR program, South Carolina must commit to revise its rules to include

requirements for calculating emissions reductions that will be used for offsets and ensure those reductions are surplus to other federal requirements. In the interim, until the State NNSR program changes are in effect, as part of the conditional approval, the State must commit to utilize the provisions of 40 Code of Federal Regulations (CFR) part 51, Appendix S to supplement its NNSR program until it is both State-effective and approved by EPA into the South Carolina SIP.

Changes to the federal new source review (NSR) regulations were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003, (collectively, these two final actions are called the "2002 NSR Reform Rules"). EPA's 2002 NSR Reform Rules, now proposed for inclusion in the South Carolina SIP, contain provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits (PALs), and recordkeeping and reporting requirements.

DATES: Comments must be received on or before October 12, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2005-SC-0004, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: fortin.kelly@epa.gov.
3. *Fax*: 404-562-9019.
4. *Mail*: (Docket ID No. EPA-R04-OAR-2005-SC-0004), Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. *Hand Delivery*: Deliver your comments to: Ms. Kelly Fortin, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2005-SC-0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the *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 at *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official business hours are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the South Carolina State Implementation Plan, contact Ms. Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency

Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9140; e-mail address: ward.nacosta@epa.gov. For information regarding New Source Review, contact Ms. Kelly Fortin, Air Permits Section, at the same address above. Telephone number: (404) 562-9117; e-mail address: fortin.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the U.S. Environmental Protection Agency. The supplementary information is arranged as follows:

- I. What Action Is EPA Proposing?
- II. Why Is EPA Proposing this Action?
- III. What Is EPA's Analysis of South Carolina's NSR Rule Revisions?
 - A. Definitions and General Standards; South Carolina Regulation 61-62.1
 - B. Prevention of Significant Deterioration; South Carolina Regulation 61-62.5, Standard No. 7
 - C. Nonattainment New Source Review; South Carolina Regulation 61-62.5, Standard No. 7.1
- IV. What Action Is EPA Proposing to Take?
- V. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing?

On July 1, 2005, the State of South Carolina, through the South Carolina Department of Health and Environmental Control (DHEC), submitted revisions to the South Carolina SIP. The SIP submittal consists of changes to the South Carolina Air Pollution Control Regulations and Standards (South Carolina Regulations). Specifically, the proposed SIP revisions include changes to South Carolina Regulation 61-62.1 entitled "Definitions and General Standards;" Regulation 61-62.5, Standard No. 7 entitled "Prevention of Significant Deterioration;" and Regulation 61-62.5, Standard No. 7.1 entitled "Nonattainment New Source Review." DHEC submitted this SIP revision in response to EPA's December 31, 2002, changes to the Federal NSR program. EPA is proposing to partially approve and disapprove certain portions of the July 1, 2005, SIP submittal, consistent with section 110(k)(3) of the CAA. EPA is also proposing to conditionally approve provisions of the July 1, 2005, SIP submittal consistent with section 110(k)(4) of the CAA. As part of the conditional approval, South Carolina will have twelve months from the date of EPA's final conditional approval of the SIP revisions in which to further revise its NNSR rules, as described herein, to be consistent with existing Federal law.

Consistent with section 110(k)(3) of the CAA, EPA may partially approve and disapprove portions of a SIP revision that meet all the applicable requirements and are severable from the remainder of the revision that is being disapproved or conditionally approved. Pursuant to section 110(k)(3), EPA is proposing to (1) approve one provision of South Carolina's minor source permitting program (discussed more fully below); (2) partially approve South Carolina's PSD program; and (3) disapprove all references to PCPs and clean units in South Carolina's PSD and NNSR programs. The PCP and clean unit references are all severable from the other provisions of South Carolina's PSD and NNSR programs. EPA is not approving any portion of South Carolina's rules regarding PCPs and clean units. Further, any use by South Carolina of its State rules on PCPs and clean units is, according to a Federal appeals court, contrary to the CAA.

Pursuant to section 110(k)(4) of the CAA, EPA may conditionally approve a portion of a SIP revision based on a commitment from the State to adopt specific, enforceable measures no later than twelve months from the approval date of final conditional approval. If the State fails to commit to undertake the necessary changes, or fails to actually make the changes within the twelve month period, EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval.

The necessary revisions to the South Carolina SIP will materially alter the existing SIP-approved rule. As a result, the State must also make a new SIP submittal to EPA for approval that includes the rule changes within twelve months from the date of EPA's final action conditionally approving South Carolina's NNSR program. As with any SIP revision, South Carolina must undergo public notice and comment, and allow for a public hearing (and any other procedures required by State law), on the proposed changes to its rules. If South Carolina fails to adopt and submit the specified measures by the end of one year (from the final conditional approval), or fails to make a SIP submittal to EPA within twelve months following the final conditional approval, EPA will issue a finding of disapproval. If South Carolina timely revises its rules and submits the revised SIP submittal, EPA will process that SIP revision consistent with the CAA.

More specifically, with regard to the conditional approval of the NNSR program, South Carolina must revise its rules to include a methodology for calculating emissions reductions to be used as offsets that includes a baseline

for determining credit for emissions offsets that, at a minimum, meets the requirements set out in 40 CFR 51.165(a)(3)(i) and Appendix S section IV.C. The emission offsets provisions must also specify that the reductions must be surplus and cannot be used for offsets if they are otherwise required by the South Carolina SIP or other Federal standards, such as the New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP), including the Maximum Achievable Control Technology (MACT) standards. As part of the conditional approval, South Carolina must commit to make these changes within the twelve month timeframe. Further, in the interim, until the required State NNSR program changes are in effect, South Carolina must commit to utilize the requirements of the Federal NNSR program outlined in 40 CFR part 51, Appendix S.

II. Why Is EPA Proposing This Action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to title 40 CFR parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. In that November 7, 2003, final action, EPA added the definition of "replacement unit," and clarified an issue regarding PALs. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." The purpose of this action is to propose to partially approve, disapprove and conditionally approve certain portions of the SIP submittal from the State of South Carolina, which includes the provisions of EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules are part of EPA's implementation of Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment" areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—"unclassifiable" areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—"nonattainment" areas. Collectively, the PSD and NNSR programs are referred to as the "New Source Review" or NSR programs. EPA regulations implementing these programs are contained in 40 CFR

51.165, 51.166, 52.21, 52.24, and part 51, Appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provided a new method for determining baseline actual emissions; (2) adopted an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allowed major stationary sources to comply with PALs to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are designated clean units; and (5) excluded PCPs from the definition of "physical change or change in the method of operation." On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for "replacement unit" and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see, 67 FR 80186 (December 31, 2002), and <http://www.epa.gov/nsr>.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR

Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the D.C. Circuit Court issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping, 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from the CFR all provisions pertaining to clean units and the PCP exemption that were vacated by the D.C. Circuit Court. These proposed actions are consistent with the D.C. Circuit Court's decision because the vacated portions of the Federal rules will not be approved as part of the South Carolina SIP. Further, EPA notes that use of any PCP and clean unit rules has been deemed contrary to the CAA by a Federal appeals court.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on March 8, 2007 (45 FR 10445), EPA responded to the D.C. Circuit Court's remand by proposing two alternative options to clarify what constitutes "reasonable possibility" and when the "reasonable possibility" recordkeeping requirements apply. The "reasonable possibility" provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. South Carolina's SIP revisions are approvable at this time because the South Carolina rules are at least as stringent as the current Federal rules (see, e.g., South Carolina Regulation 61-62.5, Standard No. 7). If EPA adopts recordkeeping criteria that are more stringent than the current South Carolina rules on recordkeeping, the State's rules may need to be revised to be at least as stringent as the Federal requirements.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51

and the 2002 NSR Reform Rules with different but equivalent regulations. However, if a state decides not to implement any of the new applicability provisions, that state is required to, among other things, demonstrate that its existing program is at least as stringent as the federal program.

On July 1, 2005, DHEC submitted a SIP revision for the purpose of revising the State's NSR permitting provisions. These changes were made primarily to adopt EPA's 2002 NSR Reform Rules. As discussed in further detail below, EPA believes the revisions contained in the South Carolina submittal are approvable for inclusion into the South Carolina SIP so long as the specific changes described below are made within twelve months of the date of EPA's final conditional approval. As a result, EPA is proposing to partially approve and disapprove, and conditionally approve the South Carolina SIP revisions, consistent with sections 110(k)(3) and 110(k)(4) of the CAA. As part of the conditional approval South Carolina must commit to utilize the provisions of 40 CFR part 51, Appendix S, for its NNSR program until the specified changes to that program are in effect and approved into the SIP by EPA.

III. What Is EPA's Analysis of South Carolina's NSR Rule Revisions?

South Carolina currently has a SIP-approved NSR program for new and modified stationary sources. Today, EPA is proposing to partially approve, disapprove, and conditionally approve revisions to South Carolina's existing NSR program. South Carolina's proposed revisions became State-effective on June 24, 2005, and were submitted to EPA on July 1, 2005. Copies of the revised rules, as well as the State's Technical Support Document, can be obtained from the Docket, as discussed in the **ADDRESSES** section above. A discussion of the specific changes to South Carolina's rules comprising the SIP revision, as well as the additional changes to be made by South Carolina to its rules as part of the conditional approval, follows.

A. Definitions and General Standards; South Carolina Regulation 61-62.1

EPA is proposing to approve Section II of South Carolina Regulation 61-62.1 regarding general permit requirements. South Carolina revised Section II, paragraph H.1, of its regulations to allow for synthetic minor permits in nonattainment areas. On April 30, 2004 (69 FR 23858), one area in South Carolina was designated nonattainment for the 8-hour ozone NAAQS, which

prompted the changes to Section II. The proposed SIP revision recognizes that South Carolina now has a nonattainment area and Section II includes the appropriate requirements for synthetic minor source permits in nonattainment areas. Since the only South Carolina area previously designated as nonattainment prior to the April 2004 designation was redesignated to attainment prior to the due date for NNSR rules, South Carolina's rules only allowed for a major source or major modification, as defined by Regulation 61-62.5, Standard No. 7 (PSD), to request federally enforceable permit conditions to limit a source's potential to emit and become a synthetic minor source. EPA is proposing to approve South Carolina's revisions to Regulation 61-62.1 to allow synthetic minor sources to obtain preconstruction permits in nonattainment as well as attainment areas. This portion of South Carolina's NSR program is severable from the NNSR rules subject to the proposed conditional approval and will not be affected by EPA's proposed disapproval. If South Carolina does not submit the required changes to its NNSR program within the specified time period, and EPA takes action to disapprove the conditionally approved portions of the NNSR program, Regulation 61-62.1 will not be affected because it is being proposed for approval today.

B. Prevention of Significant Deterioration; South Carolina Regulation 61-62.5, Standard No. 7

South Carolina Regulation 61.62.5, Standard No. 7, contains the preconstruction review program that provides for the prevention of significant deterioration of ambient air quality as required under Part C of title I of the CAA (the PSD program). The PSD program applies to sources that are major stationary sources or undergoing major modifications in areas that are designated as attainment or unclassifiable with regard to any NAAQS. South Carolina's PSD program was originally approved into the SIP by EPA on February 10, 1982, and has been revised several times since then in order to remain consistent with federal rule changes. The current changes to Standard No. 7, which EPA is now proposing to partially disapprove and partially approve into the South Carolina SIP, were submitted to update the existing South Carolina Regulation to be consistent with the current federal PSD rules, including the 2002 NSR Reform Rules. The SIP revision addresses baseline actual emissions, actual-to-projected actual applicability

tests, and PALs. South Carolina's SIP revision also includes two portions of EPA's 2002 NSR Reform Rules that were vacated by the D.C. Circuit Court—PCPs and clean units. As a result, EPA is proposing to partially approve the PSD portion of the South Carolina SIP

revision with the exception of references to PCPs and clean units which EPA is proposing to disapprove (similar references also exist in South Carolina's NNSR program). The PCP and clean unit references are severable from the PSD and NNSR programs. EPA is

disapproving all rules and/or rule sections in the South Carolina PSD rules (and NNSR rules, discussed later in this notice) referencing clean units or PCPs. Specifically, the following South Carolina rules are being proposed for disapproval.

TABLE 1.—PSD PCP AND CLEAN UNIT REFERENCES

South Carolina regulation 61–62.5, standard 7	Corresponding vacated federal provision 40 CFR 52.21	Subject
(a)(2)(iv)(e)	(a)(2)(iv)(e)	Clean unit applicability.
(a)(2)(iv)(f)—Second sentence	(a)(2)(iv)(f)—Second sentence ...	Entire second sentence (“For example * * *”) Reference to clean unit.
(a)(2)(vi)	(a)(2)(vi)	PCP provision.
(b)(12)	(b)(42)	Clean unit definition.
(b)(30)(iii)(h)	(b)(2)(iii)(h)	PCP provision.
(b)(34)(iii)(b)	(b)(3)(iii)(b)	Clean unit provision.
(b)(34)(vi)(d)	(b)(3)(vi)(d)	Clean unit and PCP provisions.
(b)(35)	(b)(32)	PCP definition.
(r)(6) ¹	(r)(6)	Reference to clean unit.
(r)(7) ¹	NA	Reference to clean unit.
(x)	(x)	Clean unit provision.
(y)	(y)	Clean unit provision.
(z)	(z)	PCP provision.

¹ Only the reference to the term “clean unit” is being proposed for disapproval. The remainder of this regulatory provision is being proposed for approval.

In addition to EPA's proposal to disapprove the South Carolina PSD and NNSR rules regarding PCPs and clean units, EPA notes that any use of such rules has been deemed contrary to the CAA by a Federal appeals court.

As part of its evaluation of the South Carolina SIP submittal, EPA performed a line-by-line comparison of the proposed revisions to the federal requirements. During this review it was noted that a typographical error exists in paragraph (b)(41)(ii)(d) of Standard No. 7, South Carolina Regulation 61–62.5, where there is a reference to paragraph (a)(41)(ii)(a). This reference should be to paragraph (b)(41)(ii)(a). Although this is a minor issue that does not affect the approvability of this portion of the SIP revision, South Carolina should correct this error the next time this rule is revised.

As a general matter, state agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. However, if a state decides not to implement any of the new applicability provisions, that state is required to demonstrate that its existing program is at least as stringent as the federal program. As part of its SIP submittal, South Carolina (through DHEC) provided EPA with an “equivalency demonstration” regarding two differences from the federal rules.

One difference relates to the removal of the word “malfunction” from the definitions of “baseline actual emissions” at paragraph (b)(4)(i)(a) and

“projected actual emissions” at paragraph (b)(41)(ii)(b) in Standard No. 7, South Carolina Regulation 61–62.5. In justifying the change, DHEC notes the difficulty of predicting malfunction emissions as part of the projected actual emissions. In addition, DHEC is concerned about the possibility that including malfunction emissions may result in the unintended rewarding of the source's poor operation and maintenance by allowing malfunction emissions to be included in baseline emissions that will be used to calculate emissions changes and emissions credits.

A second difference involves the inclusion of language in the definition of baseline actual emissions at paragraph (b)(4)(ii) in Standard No. 7, South Carolina Regulation 61–62.5, which provides DHEC with the authority to determine if the 24-month look-back period selected by the source is appropriate. In its equivalency determination, DHEC states that it is simply asserting its authority to review the source's calculations, if necessary, to ensure that the time period selected is appropriate. EPA agrees that DHEC may explicitly retain such authority, consistent with EPA's 2002 NSR Reform Rules. EPA concurs with the State that neither this change, nor the difference regarding “malfunctions,” lessens the stringency of South Carolina's NSR program. Therefore, South Carolina's PSD program may be partially approved, with the exception of the PCP and clean unit references, which are subject to

disapproval. Notably, EPA has not yet taken final action in response to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules. South Carolina's rule contains recordkeeping requirements that are at least as stringent as the federal rule. While final action by EPA with regard to the remand may require South Carolina to take action to revise their rules, at this time, the South Carolina rules are consistent with federal requirements.

After conducting the line-by-line evaluation and reviewing the equivalency determinations for certain portions of South Carolina Regulation 61–62.5, Standard No. 7, EPA has determined that the proposed SIP revisions are consistent with the federal program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, set forth at 40 CFR 51.166, with the exception of the PCP and clean unit provisions. Therefore, EPA is now proposing to partially approve and disapprove, pursuant to section 110(k)(3), the PSD portion of the July 1, 2005, SIP revision.

C. Nonattainment New Source Review; South Carolina Regulation 61–62.5, Standard No. 7.1

South Carolina's NNSR program, which provides permitting requirements for major sources in or impacting upon nonattainment areas, is set forth at Regulation 61–62.5, Standard No. 7.1.

Effective June 15, 2004, one area in South Carolina was designated nonattainment for the 8-hour ozone NAAQS. Since the only area in South Carolina previously designated as nonattainment was redesignated to attainment prior to the due date for the NNSR rules, South Carolina's rules did not contain any provisions for the permitting of sources in nonattainment areas.

South Carolina's NNSR program applies to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by Part D of title I of the CAA. To receive approval to construct, a source that is subject to South Carolina Regulation 61–62.5, Standard No. 7.1 must show that it will not cause a net increase in pollution, will not create a delay in the area attaining the NAAQS, and will install and use control technology that achieves the lowest achievable emissions rate. The provisions in the South Carolina rules were established to meet the current federal nonattainment rule, including the 2002 NSR Reform Rules, which are found at 40 CFR 51.160–51.165, and part 51, Appendix S.

As part of its evaluation of the South Carolina submittal, EPA performed a line-by-line review of the proposed revisions, as well as reviewing the equivalency determinations. EPA has determined that South Carolina's NNSR program is not entirely consistent with the program requirements for the preparation, adoption and submittal of implementation plans for NSR, set forth at 40 CFR 51.160–51.165, and that revisions are necessary for full approval. The required changes relate to

requirements for emission reductions that facilities will use to “offset” proposed emissions increases. Consistent with section 110(k)(4), EPA may conditionally approve South Carolina's SIP revision based on the State's commitment to adopt specific, enforceable measures by a date certain, not to exceed one year after the date of the conditional approval.

The CAA prohibits the use of emission reductions “otherwise required” by CAA requirements as creditable emission reductions for the purpose of NSR offsets. See CAA section 173(c)(2). In addition, the federal regulations require that emission reductions used for offsets must be “surplus.” See 40 CFR 51.165(a)(3)(ii)(C)(1)(i). The corresponding State language at 7.1(d)(1)(C)(iii)(a) indicates that reductions may be generally credited if they are permanent, quantifiable, and federally enforceable, but does not specifically address the “surplus” provision of the federal rules. The State regulation also indicates that reductions can be claimed for use as offsets to the extent the DHEC has not relied upon them for the issuance of permits under regulations approved pursuant to 40 CFR part 51, subpart I or in demonstrating attainment or reasonable further progress. See Standard 7.1(d)(viii). EPA believes this provision could be interpreted to allow the use of emissions reductions that have been required by NESHAP or NSPS requirements or may have been required by other SIP provisions not used towards reasonable further progress or in the demonstration of attainment. Hence, it is EPA's determination that the State rule does not explicitly meet

the CAA and federal requirements set out at 40 CFR 51.165.

The State nonattainment regulations also do not specifically address how the emission reductions used for offsets will be calculated. The federal regulations require each plan to provide that the “offset baseline” shall be the actual emissions of the source from which offset credit is obtained. See 40 CFR 51.165(a)(3)(i). The Emissions Offset Interpretive Ruling, 40 CFR part 51, Appendix S, sets forth the conditions upon which a major source or modification would be allowed to construct in a nonattainment area and includes provisions for establishing the baseline for calculating emissions offsets. See 40 CFR part 51, Appendix S section IV.C. At a minimum, the State rule should contain the baseline provisions for calculating offsets that meet the requirements of Appendix S. EPA is proposing to conditionally approve the South Carolina SIP revision including the NNSR program and provide South Carolina with twelve months after EPA's final conditional approval in which to effectuate the changes necessary for EPA to approve South Carolina's NNSR program.

As discussed earlier, EPA is proposing to disapprove two provisions of South Carolina's NNSR program that relate to provisions that were vacated from the federal program by the D.C. Circuit Court. The two provisions vacated from the federal rules pertain to PCPs and clean units. The PCP and clean unit references are severable from the remainder of the NNSR program. Specifically, the following South Carolina rules are being proposed for disapproval.

TABLE 2.—NNSR PCP AND CLEAN UNIT REFERENCES

South Carolina regulation 61–62.5, standard 7.1	Corresponding vacated federal provision 40 CFR 51.165	Subject
(b)(5)	(a)(2)(ii)(E)	Clean unit applicability.
(b)(6)—Second Sentence	(a)(2)(ii)(F)—Second sentence ...	Entire second sentence (“For example * * *”) Reference to clean unit.
(b)(8)	(a)(2)(iv)	PCP provision.
(c)(4)	(a)(1)(xxix)	Clean unit definition.
(c)(6)(C)(viii)	(a)(1)(v)(C)(8)	PCP provision.
(c)(8)(C)(iii)	(a)(1)(vi)(C)(3)	Clean unit provision.
(c)(8)(E)(v)	(a)(1)(vi)(E)(5)	Clean unit and PCP provisions.
(c)(10)	(a)(1)(xxv)	PCP definition.
(d)(1)(C)(ix)	(a)(3)(ii)(H)	Clean unit and PCP provisions.
(d)(1)(C)(x)	(a)(3)(ii)(I)	Clean unit and PCP provisions.
(d)(3) ¹	(a)(6)	Reference to clean unit.
(d)(4) ¹	NA	Reference to clean unit.
(f)	(c)	Clean unit provision.
(g)	(d)	Clean unit provision.
(h)	(e)	PCP provision.

¹ Only the reference to the term “clean unit” is being proposed for disapproval. The remainder of this regulatory provision is being proposed for approval.

In addition to EPA's proposal to disapprove the South Carolina PSD and NNSR rules referencing PCPs and clean units, EPA notes that any use of such rules has been deemed contrary to the CAA by a Federal appeals court.

As discussed above, South Carolina provided EPA with an equivalency demonstration to show that its program is at least as stringent as the federal program. The two differences from the federal rule for which the State is proposing equivalency are the same as those identified in the State's PSD program. These deviations from the federal rule are acceptable, and may be retained in South Carolina's final NNSR program proposed as part of this conditional approval.

The first difference regards the removal of the word "malfunction" from the definitions of "baseline actual emissions" at paragraph (c)(2)(B)(ii) and "projected actual emissions" at paragraph (c)(11)(B)(ii) in Regulation 61-62.5, Standard No. 7.1. In justifying the difference, DHEC notes the difficulty of predicting malfunction emissions as part of the projected actual emissions. In addition DHEC is concerned about the possibility that including malfunction emissions may result in the unintended rewarding of the source's poor operation and maintenance by allowing malfunction emissions to be included in baseline emissions that will be used to calculate emissions changes and emissions credits.

The second difference involves the inclusion of language in the definition of baseline actual emissions at paragraph (c)(2)(B) in Regulation 61-62.5, Standard No. 7.1, to indicate that DHEC reserves the right to determine if the 24-month look-back period selected by the source is appropriate. In its equivalency determination, DHEC states that it is simply asserting its authority to review the source's calculations, if necessary, to ensure that the time period selected is appropriate. EPA agrees that DHEC may explicitly retain such authority, consistent with EPA's 2002 NSR Reform Rules. EPA believes neither of these differences lessens the stringency of South Carolina's NNSR program.

In summary, EPA is proposing to disapprove two elements of South Carolina's new NNSR rules that pertain to PCPs and clean units and which were vacated from the federal program by the D.C. Circuit Court. These two elements include various rules which are listed in Table 2, above. In addition, EPA is proposing to conditionally approve the remainder of South Carolina's new NNSR program into the SIP. As part of the conditional approval mechanism,

within twelve months of EPA's final action on the conditional approval, the State must: (1) Revise the NNSR program to include a provision that emission reductions are surplus and are not to be used as offsets if they are otherwise required by the SIP, NSPS, NESHAP, including MACT, standards or other federal requirements; (2) revise its rule to include a methodology for the calculation of emissions reductions that includes a baseline for determining credit for emissions offsets that, at a minimum, meet the requirements set out in 40 CFR part 51, Appendix S section IV.C.; and (3) implement the provisions found in 40 CFR part 51, Appendix S until its revised NNSR program is in effect and approved into the SIP by EPA. If South Carolina fails to comply with the substantive requirements in the specified period of time, EPA will issue a finding of disapproval.

IV. What Action Is EPA Proposing To Take?

EPA is proposing to partially approve, disapprove, and conditionally approve revisions to the South Carolina SIP (Regulation 61-62.1, Regulation 61-62.5 Standard No. 7, and Regulation 61-62.5 Standard No. 7.1) submitted by DHEC on July 1, 2005, which include changes to South Carolina's PSD and NNSR programs. As part of the partial approval, EPA is approving the entirety of South Carolina's PSD program with the exception of any references to PCPs and clean units, which are proposed for disapproval (see Table 1). EPA is also approving Regulation 61-61.2 regarding synthetic minor sources that is part of the minor source permitting program. As part of the disapproval, EPA is disapproving all rules referencing clean units and PCPs in South Carolina's NNSR program (see Table 2). As part of the conditional approval, South Carolina must (1) revise the NNSR program to include a provision that emission reductions must be surplus and are not to be used as offsets if they are otherwise required by the SIP, NSPS, NESHAP, including MACT, standards or other federal requirements and submit to EPA a SIP revision within twelve months with the revised rule; (2) revise its NNSR program to include a methodology for calculating offsets, and submit to EPA a SIP revision within twelve months with the revised rule; and (3) utilize the provisions of 40 CFR part 51, Appendix S to supplement its NNSR program until South Carolina's NNSR program is approved by EPA. Consistent with section 110(k), EPA is now proposing to partially approve, disapprove and conditionally approve

the July 1, 2005, SIP revision from South Carolina.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. As a result, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 5, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7-17979 Filed 9-11-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA-R05-OAR-2007-0519; FRL-8466-2]

Approval of Implementation Plans of Michigan: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve a revision to the Michigan State Implementation Plan (SIP) submitted on July 16, 2007. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (CAIR FIP) concerning SO₂, NO_x annual, and NO_x ozone season emissions for the state of Michigan, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not

proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Michigan's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The SIP revision that EPA is proposing to conditionally approve is an abbreviated SIP revision that addresses: The applicability provisions for the NO_x ozone season trading program under the CAIR FIP and supporting definitions of terms; the methodology to be used to allocate NO_x annual and ozone season NO_x allowances under the CAIR FIP and supporting definitions of terms; and provisions for opt-in units under the CAIR FIP. Michigan will be submitting additional SO₂ rules in the future.

DATES: Comments must be received on or before October 12, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-0519, by one of the following methods:

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

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

3. *Fax*: (312) 886-5824.

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

5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2007-0519. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353-6960, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, aburano.douglas@epa.gov.

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I. What Action Is EPA Proposing To Take?

CAIR SIP Approval

EPA is proposing to conditionally approve a revision to Michigan's SIP, submitted on July 16, 2007, that would modify the application of certain provisions of the CAIR FIP concerning NO_x annual and NO_x ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) The CAIR SO₂ FIP will remain in place unaffected. Michigan is subject to the CAIR FIP that implements the CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered federal CAIR SO₂, NO_x annual, and NO_x ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO_x allowances for the NO_x annual and NO_x ozone season trading programs. The CAIR FIP provides that this methodology, if approved as EPA is proposing, will be used to allocate NO_x allowances to sources in Michigan, instead of the federal allocation methodology otherwise provided in the FIP. The SIP revision also provides a methodology for allocating the compliance supplement pool (CSP) in the CAIR NO_x annual trading program, expands the applicability provisions of the CAIR NO_x ozone season trading program, and allows for individual units not otherwise subject to the CAIR trading programs to opt into such trading programs. Consistent with the flexibility provided in the FIP, these provisions, if approved, will also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Michigan. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Michigan's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

This SIP revision is being proposed for conditional approval as opposed to a full or complete approval because of several minor deficiencies that must be addressed. If the conditions for full

approval are not met within one year of the effective date of EPA approval, this conditional approval will revert to a disapproval, as of the deadline for meeting the conditions, without further action required by EPA. In the event the conditional approval reverts to a disapproval, EPA will publish a notice in the **Federal Register** to inform the public. If Michigan does meet the conditions necessary for a full approval, EPA will publish a **Federal Register** notice finalizing the full approval.

II. What Is the Regulatory History of the CAIR and the CAIR FIP?

The CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 states and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states in the eastern part of the country. As a result, EPA required those upwind states to revise their SIPs to include control measures that reduce emissions of SO₂, which is a precursor to PM_{2.5} formation, and/or NO_x, which is a precursor to both ozone and PM_{2.5} formation. For jurisdictions that contribute significantly to downwind PM_{2.5} nonattainment, CAIR sets annual state-wide emission reduction requirements (i.e., budgets) for SO₂ and annual state-wide emission reduction requirements for NO_x. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets state-wide emission reduction requirements for NO_x for the ozone season (May 1st to September 30th). Under CAIR, states may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject states what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and PM_{2.5} NAAQS. EPA made national findings, effective May 25, 2005, that the states had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and PM_{2.5} NAAQS. These findings started a 2-year clock for EPA to promulgate a Federal Implementation Plan (FIP) to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP

revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated a FIP for all states covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR state is subject to the FIP until the state fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIP requires certain EGUs to participate in the EPA-administered CAIR SO₂, NO_x annual, and NO_x ozone season model trading programs, as appropriate. The CAIR FIP SO₂, NO_x annual, and NO_x ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO₂, NO_x annual, and NO_x ozone season) in all states covered by CAIR FIP or SIP trading programs for that pollutant. The CAIR FIP also allows states to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO_x allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two more CAIR-related final rules that added the states of Delaware and New Jersey to the list of states subject to CAIR for PM_{2.5} and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements.

III. What Are the General Requirements of CAIR and the CAIR FIP?

CAIR establishes state-wide emission budgets for SO₂ and NO_x and is to be implemented in two phases. The first phase of NO_x reductions starts in 2009 and continues through 2014, while the first phase of SO₂ reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_x and SO₂ starts in 2015 and continues thereafter. CAIR requires states to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or, (2) adopting other control measures of the state's choosing and demonstrating that such control measures will result in compliance with the applicable state SO₂ and NO_x budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that states must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only states that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for states that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for states that include all non-EGUs from their NO_x SIP Call trading programs in their CAIR NO_x ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most states will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such states, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIP. Alternatively, states may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIP; however, the CAIR FIP provides that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIP (e.g., the NO_x allowance allocation methodology).

A state submitting an abbreviated SIP revision, may submit limited SIP revisions to tailor the CAIR FIP cap-and-trade programs to the state submitting the revision. Specifically, an abbreviated SIP revision may establish certain applicability and allowance allocation provisions that will be used instead of or in conjunction with the corresponding provisions in the CAIR FIP rules in that state. Specifically, the abbreviated SIP revisions may:

1. Include NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_x ozone season trading program;
2. Provide for allocation of NO_x annual or ozone season allowances by the state, rather than the Administrator,

and using a methodology chosen by the state;

3. Provide for allocation of NO_x annual allowances from the compliance supplement pool (CSP) by the state, rather than by the Administrator, and using the state's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP cap-and-trade programs under the opt-in provisions in the CAIR FIP rules.

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the state by that approved SIP revision.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the state's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_x allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the state's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the July 16, 2007, submittal from Michigan has been submitted as an abbreviated SIP revision.

V. Analysis of Michigan's CAIR SIP Submittal

A. Nature of Michigan's Submittal

On July 16, 2007, Michigan submitted draft rules and supporting material for addressing CAIR requirements. The Michigan Department of Environmental Quality (MDEQ) held a public hearing on these proposed rules on April 2, 2007. MDEQ also provided a 30-day comment period that ended on April 2, 2007.

B. Summary of Michigan's Rules

Part 8 of Michigan Air Pollution Control Rules, entitled, "Emission Limitations and Prohibitions—Oxides of Nitrogen," includes provisions limiting the emissions of NO_x from stationary sources in Michigan. While Part 8 contains many sections, Michigan submitted only a portion of them to address the CAIR requirements. Specifically, Michigan submitted rules 802a, 803, 821 through 826, and 830 through 834 for federal approval.

- Rule 802a, entitled "Adoption by reference," contains adoption by reference language. Michigan has adopted necessary portions of federal regulations including parts of: EPA's

Acid Rain Program (specifically 40 CFR 72.2 and 72.8), Continuous Emission Monitoring Program (the entire 40 CFR part 75), NO_x Model Rule Compliance 40 CFR 96.54, and the CAIR SO₂ and NO_x FIP rules (specifically 40 CFR 97.2, 97.102, 97.103, 97.104, 97.302, 97.303, 97.304, 97.180 to 97.188, 97.380 to 97.388).

- Rule 803, entitled "Definitions," modifies the existing Michigan definitions section to address the CAIR requirements. In order to incorporate sources affected by the NO_x SIP Call into the CAIR NO_x trading program, and also to accommodate Michigan's NO_x allocation methodology, the state has adopted definitions that did not already exist in the CAIR FIP.

- Rule 821, entitled "CAIR NO_x ozone season and annual trading programs; applicability determinations," contains applicability criteria. Michigan has incorporated the CAIR applicability from the CAIR FIP, has included the non-EGU sources from the NO_x SIP Call, and also allows sources of renewable energy and renewable energy projects to receive NO_x allowances under the state's allocation methodology. Michigan has also included in this section allocation adjustments based on EGU fuel type.

- Rule 822, entitled "CAIR NO_x ozone season trading program; allowance allocation," establishes the NO_x budgets for the ozone season control period and establishes the allocation methodology procedures for the ozone season. These provisions describe how Michigan sources under the CAIR FIP, non-EGUs formerly affected by the NO_x SIP Call, and renewable energy sources will be allocated NO_x ozone season allowances.

- Rule 823, entitled "New EGUs, new non-EGUs, and newly affected EGUs under CAIR NO_x ozone season trading program; allowance allocations," establishes the provisions for a set-aside ozone season control period allocation pool for new EGUs, new non-EGUS, and newly affected EGUS (which were not included in the original NO_x SIP Call program due to geographic location).

- Rule 824, entitled "CAIR NO_x ozone season trading program; hardship set-aside," establishes the provisions for a hardship set-aside ozone season control period allocation pool to address issues for small (*i.e.*, employing fewer than 250 people) businesses that can demonstrate that the controls required for this source result in excessive or prohibitive costs for compliance.

- Rule 825, entitled "CAIR NO_x ozone season trading program; renewable set-aside," establishes the provisions for an ozone season control

period allocation pool to be allocated to renewable energy sources or renewable energy projects.

- Rule 826, entitled “CAIR NO_x ozone season trading program; opt-in provisions,” adopts by reference the ozone season control period opt-in provisions under the federal CAIR FIP rules, specifically 40 CFR 97.380 to 97.388.
- Rule 830, entitled “CAIR NO_x annual trading program; allowance allocations,” establishes the NO_x budgets for the annual control period, and establishes the allocation methodology procedures for the annual control period.
- Rule 831, entitled “New EGUs under CAIR NO_x annual trading program; allowance allocations,” establishes the provisions for a set-aside annual control period allocation pool for new EGUs and the pool allocation methodology.
- Rule 832, entitled “CAIR NO_x annual trading program; hardship set-aside,” establishes the provisions for a set-aside annual control period allocation pool to address issues for small (*i.e.*, employing fewer than 250 people) businesses that can demonstrate that the required controls will result in excessive or prohibitive compliance costs.
- Rule 833, entitled “CAIR NO_x annual trading program; compliance supplement pool,” establishes the provisions for an annual control period compliance supplement pool that provides for allocation for early reduction credit generation for existing sources, and for the newly affected EGUs that were not in the original NO_x Budget Program that can demonstrate that compliance during the 2009 control period would create an undue risk to the reliability of the electrical supply.
- Rule 834, entitled “Opt-in provisions under the CAIR NO_x annual trading program,” adopts by reference the opt-in provisions for the annual control period under the federal CAIR rules. While Michigan has developed an abbreviated SIP, it differs from most other states because of artifacts from the NO_x SIP Call. While many states are affected by the NO_x SIP Call, Michigan is one of only a few states that is not entirely covered under the NO_x SIP Call, due to a modeling boundary that EPA used in atmospheric modeling of pollution sources and downwind effects. Only those Michigan counties that fall, in their entirety, south of 44° latitude are affected by the NO_x SIP Call. This is the result of a decision in *Michigan v. EPA*, 213 F.3d 663 (DC Cir. March 3, 2000) that established 44° (a modeling boundary) as the appropriate

northern boundary for the NO_x SIP Call. EPA describes both the court decision and how it applies to Michigan in a **Federal Register** notice dated April 21, 2004 (69 FR 21604, 21622–21627). Although only a portion of Michigan is affected by the NO_x SIP Call, the entire state is affected by CAIR. In order to transition from the NO_x SIP Call trading program to the CAIR ozone season trading program, the Michigan rules include additional definitions and provisions to account for this geographic discrepancy.

An additional complication that Michigan has addressed in its rules is that the CAIR requirements for sources of NO_x begin in 2009. Under the NO_x SIP Call, Michigan has already issued NO_x allowances through 2009. Because the 2009 NO_x SIP Call allowances have already been allocated to the Michigan sources, Michigan included provisions acknowledging the 2009 NO_x SIP Call allowances and provided that they will be treated as CAIR NO_x ozone season allowances issued for that year. 2010 will be the first year in which Michigan sources (other than CAIR opt-in units) will be allocated CAIR NO_x ozone season allowances that were not previously issued as NO_x SIP Call allowances.

C. State Budgets for Allowance Allocations

The CAIR NO_x annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu for phase 1, and 0.125 lb/mmBtu for phase 2, to obtain regional NO_x budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the state NO_x annual and ozone season budgets from the regional budgets using state heat input data adjusted by fuel factors.

The CAIR FIP established the NO_x budgets for Michigan as 65,304 tons for NO_x annual emissions for 2009–2014; 54,420 tons for NO_x annual emissions for 2015 and thereafter; 28,971 tons for NO_x ozone season emissions for 2009–2014; and 24,142 tons for NO_x ozone season emissions for 2015 and thereafter. Michigan’s SIP revision, proposed for conditional approval in today’s action, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIP. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

D. CAIR Cap-and-Trade Programs

The CAIR NO_x annual and ozone-season FIP largely mirrors the structure of the NO_x SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_x annual and ozone-season FIP are similar, there are some differences. For example, the NO_x annual FIP (but not the NO_x ozone season FIP) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_x annual emissions. As a further example, the NO_x ozone season FIP reflects the fact that the CAIR NO_x ozone season trading program replaces the NO_x SIP Call trading program after the 2008 ozone season and is coordinated with the NO_x SIP Call program. The NO_x ozone season FIP provides incentives for early emissions reductions by allowing banked, pre-2009 NO_x SIP Call allowances to be used for compliance in the CAIR NO_x ozone-season trading program. In addition, states have the option of continuing to meet their NO_x SIP Call requirement by participating in the CAIR NO_x ozone season trading program and including all their NO_x SIP Call trading sources in that program.

EPA used the CAIR model trading rules as the basis for the trading programs in the CAIR FIP. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO₂, NO_x annual, and NO_x ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO₂, NO_x annual, and NO_x ozone season trading programs.

Michigan is subject to the CAIR FIP for ozone and PM_{2.5}, and the CAIR FIP trading programs for SO₂, NO_x annual, and NO_x ozone season apply to sources in Michigan. Consistent with the flexibility it gives to states, the CAIR FIP provides that states may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. Michigan’s July 16, 2007, submission is an abbreviated SIP revision.

E. Applicability Provisions for Non-EGU NO_x SIP Call Sources

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit’s combustion chamber, a generator with

nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR NO_x ozone season program only, those units in the state's NO_x SIP Call trading program that are not EGUs as defined under CAIR. EPA advises states exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304 and add the applicability provisions in the state's NO_x SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_x ozone season trading program all units required to be in the state's NO_x SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_x ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e., units serving a generator with a nameplate capacity of 25 MWe or less), that the state currently requires to be in the NO_x SIP Call trading program.

Consistent with the flexibility given to states in the CAIR FIP, Michigan has chosen to expand the applicability provisions of the CAIR NO_x ozone season trading program to include all non-EGUs in the state's NO_x SIP Call trading program.

F. NO_x Allowance Allocations

Under the NO_x allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_x annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIP provides states the flexibility to establish a different NO_x allowance allocation methodology that will be used to allocate allowances to sources in the states if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_x allowance allocation methodologies, states have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;

3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and

4. The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to states in the CAIR FIP, Michigan has chosen to replace the provisions of the CAIR NO_x annual FIP concerning the allocation of NO_x annual allowances with its own methodology. Michigan has chosen to distribute NO_x annual allowances based upon a heat input based methodology for existing units, with set-asides for new sources and for existing sources that submit acceptable demonstrations of hardship to MDEQ.

Michigan's Rule 830 allocates three years of NO_x annual allowances at a time to existing sources on a heat input basis. This begins in 2007 for the annual control periods of 2009, 2010 and 2011. By October 31, 2008, Michigan will submit to EPA allocations for the annual control periods of 2012, 2013 and 2014. By October 31, 2011, and, thereafter, each October 31 of every third year Michigan will submit to EPA allocation for the subsequent three year period.

Under Michigan Rule 831, the new source set-aside for new EGUs is 1,000 tons per year for years 2009–2011, and 1,400 tons per year for years 2012 and thereafter. Allowances for the first annual control period under the new source set-aside are allocated based on 70 percent of a unit's projected emissions. After the first annual control period, new EGUs can request allowances equal to (the number of megawatt hours operated during the previous control period divided by 2,000 lb/ton), multiplied by (1.0 lb NO_x/megawatt hours). Once a unit has five years of operating data, it is no longer considered a "new" unit and will be allocated allowances as an existing source under Rule 830.

Michigan Rule 832 establishes a hardship set-aside of 1,200 allowances per year for existing sources. Existing sources with fewer than 250 employees that are able to submit a demonstration to Michigan that the control level required by CAIR will result in excessive or prohibitive compliance costs can request allowances from this set-aside pool.

Michigan Rule 833 establishes a compliance supplement pool of 6,491 allowances for existing EGUs and a pool for newly-affected EGUs of 1,856 allowances. For existing EGUs, allowances can be requested if units have made early reductions during calendar year 2007 and 2008. A newly affected EGU can request hardship allowances if it can demonstrate that

compliance with CAIR will result in hardship.

Consistent with the flexibility given to states in the CAIR FIP, Michigan has chosen to replace the provisions of the CAIR NO_x ozone season FIP concerning allowance allocations with its own methodology. Michigan has chosen to distribute NO_x ozone season allowances using a heat input-based methodology for existing units, with set-asides for new sources, renewable energy sources, and existing sources that submit acceptable demonstrations of hardship to MDEQ.

Michigan's Rule 822 establishes trading budgets for existing EGUs, new EGUs, newly affected EGUs, existing non-EGUs, renewable sources and hardship set-asides. Rule 822 also provides for allocation of three years of NO_x ozone season control period allowances at a time to existing EGUs and existing non-EGUs on a heat input basis. This begins in 2007 for the ozone season control periods of 2010 and 2011. By October 31, 2008, Michigan will submit to EPA allocations for the ozone control periods of 2012, 2013 and 2014. By October 31, 2011, and thereafter by each October 31 of the year that is three years after the last year of allocation submittal, Michigan will submit the next three years of ozone control period allocations to EPA. Allowances for the 2009 ozone control period are the same as were allocated under the NO_x SIP Call Budget Trading Program.

Rule 823 establishes a set-aside pool for new EGUs, new non-EGUs and newly affected EGUs. Rule 823 also includes the directions for how sources can apply for the allowances in this set-aside. Most EGUs were allocated NO_x allowances for the 2009 ozone control period under the NO_x SIP Call. These allowances are now being designated as CAIR NO_x ozone season allowances issued for the 2009 ozone control period. Newly affected EGUs that were not subject to the NO_x SIP Call never were allocated 2009 ozone control period allowances under the NO_x SIP Call, but will need allowances to comply with CAIR in 2009. Therefore, they are being allowed to request allowances from this set-aside. Newly affected sources can request allowances based on their historic heat input. For the first ozone season control period of operation, new EGUs and new non-EGUs can request allowances from this set-aside based on predicted hours of operation. For the four ozone control periods after the first ozone control period of operation, new EGUs may request allowances based on the actual number of megawatt hours of electricity

generated during the ozone control period immediately preceding the request. After a new EGU has five ozone control periods of operating data, it is no longer considered a “new” EGU and is allocated ozone control period allowances per the requirements found in Rule 822.

Rule 824 creates an annual hardship set-aside pool of 650 allowances beginning in 2010. Both existing EGUs and non-EGUs can request allowances from this pool if the company making the request employs fewer than 250 people and can make a demonstration of financial hardship. The number of allowances a source can request will be based on historical heat input.

Rule 825 establishes a set-aside of 200 allowances per year for renewable units. Initially, renewable units can request allowances from this set-aside based on the nameplate capacity of the unit and the predicted hours of operation during the ozone control period. After a renewable unit has been in operation for one ozone control period, the unit can request allowances based on the previous ozone season control period’s actual megawatt hours. Renewable units may only request allowances for three consecutive ozone seasons.

G. Allocation of NO_x Allowances From the Compliance Supplement Pool

The CSP provides an incentive for early reductions in NO_x annual emissions. The CSP consists of 200,000 CAIR NO_x annual allowances of vintage 2009 for the entire CAIR region, and a state’s share of the CSP is based upon the state’s share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_x reductions during 2007 or 2008 beyond what is required by any applicable state or federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR NO_x annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those states.

Consistent with the flexibility given to states in the FIP, Michigan has chosen to modify the provisions of the CAIR NO_x annual FIP concerning the allocation of allowances from the CSP. Michigan Rule 833 establishes an annual compliance supplement pool of 6,491 allowances for existing EGUs and an annual pool for newly-affected EGUs of 1,856 allowances. Existing EGUs can

request allowances if the units have made early reductions during calendar years 2007 and 2008. Newly affected EGUs can request hardship allowances if a demonstration of hardship can be made.

H. Individual Opt-In Units

The opt-in provisions allow for certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a state only if the state’s abbreviated SIP revision adopts the opt-in provisions. The state may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The state also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the state without the ability for units to opt into the program.

Consistent with the flexibility given to states in the FIP, Michigan has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO_x annual trading program. Michigan has adopted by reference the FIP language regarding opt-ins. Rule 802a incorporates 40 CFR 97.180 to 97.188 by

reference, and Rule 834 makes them applicable to units in the State.

Consistent with the flexibility given to states in the FIP, Michigan has chosen to permit non-EGUs meeting certain requirements to participate in the CAIR NO_x ozone season trading program. Michigan has adopted by reference the FIP language regarding opt-ins. Rule 802a incorporates 40 CFR 97.380 to 97.388 by reference, and Rule 826 makes them applicable to units in the State.

I. Conditions for Approval

EPA notes that it has identified several minor deficiencies that are necessary to correct in Michigan’s rules. These minor deficiencies are as follows:

1. In rule 803(3), Michigan needs to add a definition for “commence operation.” This definition, and the revised definition of “commence commercial operation,” are necessary to take account of NO_x SIP Call units brought into the CAIR NO_x ozone season trading program that do not generate electricity for sale and to ensure that they have appropriate deadlines for certification of monitoring systems under 40 CFR Part 97.

2. In rule 803(3)(c), Michigan needs to revise the definition for “commence commercial operation,” as described in Condition 1, above.

3. In rule 803(3)(d)(ii), Michigan needs to revise the definition of “electric generating unit” or “EGU.” EPA interprets Michigan’s current rule 803 as properly including in the CAIR NO_x ozone season trading program all EGUs in Michigan that were subject to the NO_x SIP Call trading program. Michigan must revise the rule to clarify that all EGUs in Michigan that were subject to the NO_x SIP Call trading program are included in the CAIR NO_x ozone season trading program.

4. In rule 823(5)(c), Michigan needs to reference “subrule (1)(a), (b), (c), and (d)” of the rule. While EPA interprets Michigan’s current rule as limiting the new unit set-aside allocations to the amount of allowances in the set-aside, Michigan must revise this provision to clarify the mechanism for implementing this limitation on such allocations.

These minor deficiencies are described in detail in a technical support document in the docket for this rulemaking. By a letter dated August 15, 2007, Michigan committed to making final and effective revisions to its rules by correcting these deficiencies as discussed above by July 20, 2008.

Under section 110(k)(4) of the CAA, EPA may conditionally approve a SIP revision based on a commitment from the State to adopt specific enforceable

measures by a date certain that is no more than one year from the date of conditional approval. In this action, we are proposing to approve the SIP revision that Michigan has submitted on the condition that the minor deficiencies in the SIP revision are corrected as discussed above by the date referenced in Michigan's letter, *i.e.*, by July 20, 2008. If this condition is not met within one year of the effective date of final rulemaking, the conditional approval will automatically revert to a disapproval—as of the deadline for meeting the conditions—without further action from the EPA. A notice will be published in the **Federal Register** informing the public of a disapproval. In the event the conditional approval automatically reverts to a disapproval, the validity of allocations made under the SIP revision (including the treatment, of previously allocated 2009 NO_x SIP Call allowances as 2009 CAIR ozone season allowances) before the date of such reversion to disapproval will not be affected. If Michigan submits final and effective rule revisions correcting the deficiencies as discussed above within one year from this conditional approval being final and effective, EPA will publish in the **Federal Register** a notice to acknowledge this and to convert the conditional approval to a full approval.

VI. Proposed Action

EPA is proposing to conditionally approve Michigan's abbreviated CAIR SIP revision submitted on July 16, 2007. Michigan is covered by the CAIR FIP, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. Under this abbreviated SIP revision and consistent with the flexibility given to states in the FIP, Michigan adopts provisions for allocating allowances under the CAIR FIP NO_x annual and ozone season trading programs. In addition, Michigan adopts in the abbreviated SIP revision provisions that establish a methodology for allocating allowances in the CSP, expand the applicability provisions for the CAIR FIP NO_x ozone season trading program, and allow for individual non-EGUs to opt into the CAIR FIP NO_x annual and NO_x ozone season cap-and-trade programs. As provided for in the CAIR FIP, these provisions in the abbreviated SIP revision will replace or supplement the corresponding

provisions of the CAIR FIP in Michigan. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO_x annual and NO_x ozone season emissions. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves Michigan's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting federal requirements and would impose no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this action proposes to approve pre-existing requirements under state law and would not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposal also does not have tribal implications 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as

specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard and to amend the appropriate appendices in the CAIR FIP trading rules to note that approval. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it would approve a state rule implementing a federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 97

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 4, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7-18026 Filed 9-11-07; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 72, No. 176

Wednesday, September 12, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Title II Resource Advisory Committee Meeting Advisory

AGENCY: Colville National Forest, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Colville National Forest's Resource Advisory Committee has scheduled a meeting to occur in Colville, Washington. The purpose of the meeting is to provide recommendations for Title II projects to be funded by the Secure Rural Schools and Community Self-Determination Act, more commonly known as Payments to Counties, in Fiscal Year 2008.

DATES: The meeting will be held on Wednesday, September 26, 2007, from 9 a.m. until 4 p.m. A public input session will be provided. Comments will be limited to three minutes per person. The Designated Federal Official may choose to cancel this meeting if appropriate.

ADDRESSES: The meeting will be held at the Colville Campus of Community Colleges of Spokane—Colville Center, 985 South Elm Street, Colville, WA 99114.

FOR FURTHER INFORMATION CONTACT: Rick Brazell, Forest Supervisory, the Designated Federal Official for the Colville National Forest Resource Advisory Committee. Colville National Forest, 765 South Main Street, Colville, WA 99114, 509-684-7000

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Project discussion will be limited to Resource Advisory Committee members and Forest Service personnel. However, a public input session will be provided on the agenda, and individuals will have the opportunity to address the committee at that time.

Dated: September 6, 2007.

Donald N. Gonzalez,

Acting Forest Supervisor.

[FR Doc. 07-4463 Filed 9-11-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

East Texas Electric Cooperative: Notice of Intent To Hold a Public Scoping Meeting and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent To Hold a Public Scoping Meeting and Prepare an Environmental Assessment.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development, intends to hold a public scoping meeting and prepare an Environmental Assessment (EA) related to possible financial assistance to East Texas Electric Cooperative (ETEC) of Nacogdoches, Texas, for the proposed construction of approximately 168 MW simple cycle combustion turbine generation station in San Jacinto County, Texas. ETEC is requesting USDA Rural Development to provide financial assistance for the proposal.

DATES: USDA Rural Development will hold a scoping meeting in an open house format in order to provide information and solicit comments for the preparation of an EA. The meeting will be held on September 25, 2007, from 5 to 8 p.m. at the Shepherd ISD Administration Board Room, 1401 S. Byrd Avenue, Shepherd, Texas 77371. Submit questions and comments in writing by October 26, 2007.

ADDRESSES: To send comments or for further information, contact: Dennis Rankin, Environmental Protection Specialist, USDA, Rural Development Utilities Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250-1571, telephone (202) 720-1953, or e-mail: dennis.rankin@wdc.usda.gov.

An Alternative Evaluation/Site Selection Study will be available for public review at USDA Rural Development offices at 1400

Independence Avenue, SW., Washington, DC 20250-1571, and at the following Web site: <http://www.usda.gov/rus/water/ees/ea.htm>.

SUPPLEMENTARY INFORMATION: ETEC is constructing the Jacinto Peaking Power Facility (JPPF), a 168 MW simple cycle combustion turbine generation station, in San Jacinto County, Texas. The project is located approximately 5 miles south of Shepherd and 2 miles east of U.S. Highway 59. Construction on the project is expected to commence in June 2008 with an expected completion date of May 2009. The generation facility will be constructed, owned, operated, and maintained by ETEC.

The generation units at the JPPF will consist of two (2) natural gas fired combustion turbines that have a net output of 84 MW each. The project will require the construction of less than 500 feet of transmission line to interconnect with Entergy's existing 138 kV Jacinto-Poco transmission line that crosses the property where the JPPF will be located. The output of the JPPF will be used to meet ETEC's power and energy requirements in east Texas, along with providing added reliability and stability to the region's power and transmission system.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposal. Representatives from USDA Rural Development and ETEC will be available at the scoping meeting to discuss USDA Rural Development's environmental review process, describe the project, the purpose and need for the proposal, and discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments.

Comments received by the due date will be incorporated into the environmental analyses ETEC prepares and submits to USDA Rural Development for review. USDA Rural Development will use the environmental analyses to determine the significance of the impacts of the project and may adopt it as its EA of the project. USDA Rural Development's EA of the proposal would be available for review and comment for 30 days.

Should USDA Rural Development determine that the preparation of an Environmental Impact Statement is not necessary, it will prepare a Finding of

No Significant Impact. Any final action by USDA Rural Development related to the proposed proposal will be subject to, and contingent upon, compliance with all relevant federal, state and local environmental laws and regulations and completion of the environmental review procedures as prescribed by USDA Rural Development Environmental Policies and Procedures (7 CFR part 1794).

Dated: September 6, 2007.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Development/Utilities Programs.

[FR Doc. E7-17916 Filed 9-11-07; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

East Texas Electric Cooperative: Notice of Intent To Hold a Public Scoping Meeting and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to Hold A Public Scoping Meeting and Prepare an Environmental Assessment.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development, intends to hold a public scoping meeting and prepare an Environmental Assessment (EA) related to possible financial assistance to East Texas Electric Cooperative (ETEC) of Nacogdoches, Texas, for the proposed construction of approximately 168 MW simple cycle combustion turbine generation station in Hardin County, Texas. ETEC is requesting USDA Rural Development to provide financial assistance for the proposal.

DATES: USDA Rural Development will hold a scoping meeting in an open house format in order to provide information and solicit comments for the preparation of an EA. The meeting will be held on September 26, 2007, from 5 to 8 p.m. at the Hardin County Commissioners' Courtroom, 300 Monroe Street, Kountz, Texas 77625. Submit questions and comments in writing by October 26, 2007.

ADDRESSES: To send comments or for further information, contact: Dennis Rankin, Environmental Protection Specialist, USDA, Rural Development Utilities Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571,

Washington, DC 20250-1571, telephone (202) 720-1953, or e-mail:

dennis.rankin@wdc.usda.gov. An Alternative Evaluation/Site Selection Study will be available for public review at USDA Rural Development offices at 1400 Independence Avenue, SW., Washington, DC 20250-1571; at the following Web site *http://www.usda.gov/rus/water/ees/ea.htm*.

SUPPLEMENTARY INFORMATION: ETEC is constructing the Cypress Peaking Power Facility (CPPF), a 168 MW simple cycle combustion turbine generation station, in Hardin County, Texas. The project is located approximately 6 miles southeast of Kountz and one-half mile west of U.S. Highway 69/287, and will be adjacent to an existing Entergy electrical substation. Construction on the project is expected to commence in June 2008, with an expected completion date of May 2009. The generation facility will be constructed, owned, operated, and maintained by ETEC.

The generation units at the CPPF will consist of two (2) natural gas fired combustion turbines that have a net output of 84 MW each. The project will require the construction of a 1,200 foot 230 kV transmission line to interconnect with Entergy's existing Cypress substation. The output of the CPPF will be used to meet ETEC's power and energy requirements in east Texas, along with providing added reliability and stability to the region's power and transmission system.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposal. Representatives from USDA Rural Development and ETEC will be available at the scoping meeting to discuss USDA Rural Development's environmental review process, describe the project, the purpose and need for the proposal, and discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments.

Comments received by the due date will be incorporated into the environmental analyses ETEC prepares and submits to USDA Rural Development for review. USDA Rural Development will use the environmental analyses to determine the significance of the impacts of the project and may adopt it as its EA of the project. USDA Rural Development's EA of the proposal would be available for review and comment for 30 days.

Should USDA Rural Development determine that the preparation of an Environmental Impact Statement is not necessary, it will prepare a Finding of

No Significant Impact. Any final action by USDA Rural Development related to the proposed proposal will be subject to, and contingent upon, compliance with all relevant federal, state and local environmental laws and regulations and completion of the environmental review procedures as prescribed by USDA Rural Development Environmental Policies and Procedures (7 CFR part 1794).

Dated: September 6, 2007.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Development/Utilities Programs.

[FR Doc. E7-17917 Filed 9-11-07; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Request for Duty-Free Entry of Scientific Instruments or Apparatus.

Form Number(s): ITA-338P.

OMB Control Number: 0625-0037.

Type of Request: Regular submission.

Burden Hours: 130.

Number of Respondents: 65.

Average Hours Per Response: 2.

Needs and Uses: The Departments of Commerce and Homeland Security ("DHS") are required to determine whether non-profit institutions established for scientific or educational purposes are entitled to duty-free entry for scientific instruments that the institutions import under the Florence Agreement. Form ITA-338P enables: (1) DHS to determine whether the statutory eligibility requirements for the institution and the instrument are fulfilled, and (2) Commerce to make a comparison and finding as to the scientific equivalency of comparable instruments being manufactured in the United States. Without the collection of the information, DHS and Commerce would be unable to carry out the responsibilities assigned by law.

Affected Public: Federal, state or local government; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395-7285 or via the Internet at David_Rostker@omb.eop.gov.

Dated: September 6, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-17920 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

**Submission for OMB Review;
Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Statement of Financial Interests, Regional Fishery Management Councils.

Form Number(s): NOAA Form 88-195.

OMB Approval Number: 0648-0192.

Type of Request: Regular submission.

Burden Hours: 194.

Number of Respondents: 332.

Average Hours Per Response: 35 minutes.

Needs and Uses: Section 302(j) of the Magnuson-Stevens Fishery Conservation and Management Act requires that Council members appointed by the Secretary, Scientific and Statistical Committee members appointed by a Council, or individuals nominated by the Governor of a State for possible appointment as a Council member disclose their financial interest in any Council fishery. These interests include harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.

Affected Public: Individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker,
(202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or David_Rostker@omb.eop.gov.

Dated: September 6, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-17921 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Census Bureau

**Proposed Information Collection;
Comment Request; Government
Employment Forms**

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration written comments must be submitted on or before November 13, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ellen Thompson, Chief, Employment Branch, Governments Division, U.S. Census Bureau, Washington, DC 20233-6800 (301-763-1531) (or via the Internet at ellen.ann.thompson@census.gov).

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to request clearance for the forms necessary to conduct the public employment program which consists of an annual collection of information and a quinquennial collection in a census environment in years ending in "2" or "7." During the upcoming two years, Census plans to conduct the 2008 and 2009 Annual Survey of Government Employment.

Under Title 13, Section 161, of the United States Code, the Secretary of Commerce is authorized to conduct the public employment program, which collects and disseminates data by function for full-time and part-time employees, payroll, and number of part-time hours worked. The number and content of the data items collected are the same in the annual and census cycles.

The burden hours requested are based on the expected 2008 annual survey mail out of 18,160 forms.

The state and local government statistics produced, covered national, state, and local aggregates on various functions with comparative detail for individual governments for the pay period that includes March 12. The public employment program provides the only comprehensive count of employees and payrolls in state and local governments. Government employees constitute approximately one-sixth of the entire U.S. workforce and their salaries are a major source of personal income.

The Census Bureau provides this employment data to the Bureau of Economic Analysis for constructing the functional payrolls in the public sector Gross Domestic Product, payroll being the single largest component of current operations. Other government users include the Bureau of Labor Statistics, as a benchmark for its monthly employment programs, and the Department of Housing and Urban Development, to establish payroll guidelines for local public housing authorities.

The public employment program has increasingly been used as the base for reimbursable programs of other Federal agencies such as: (1) The government portion of the Medical Expenditure Panel Survey commissioned by the Agency for Healthcare Research and Quality to provide timely, comprehensive information about health care use and costs in the United States, and (2) The Bureau of Justice Statistics (BJS) survey Criminal Justice Expenditure and Employment Survey

which provides criminal justice expenditure and employment data on spending and personnel levels.

Statistics are produced as data files in both electronic and printed formats. The program has made possible the dissemination of comprehensive and comparable governmental statistics since 1940.

The many users of the public employment program data include Federal agencies, state and local governments and related organizations, public interest groups, and many business, market, and private research organizations.

II. Method of Collection

Approximately 18,160 state agencies, county governments, consolidated city-county governments, independent cities, towns, townships, special district governments, and public school systems designated for the annual survey will be sent an appropriate form or the data will be collected through a data sharing arrangement between the Census Bureau and the state government.

We developed cooperative agreements with state and large local government officials to collect the data from their dependent agencies and report to Census as one central respondent. These arrangements reduce the need for a mail canvass of approximately 3,413 state agencies and 740 school systems. Currently we have central collection agreements with 43 states, five local school district governments, and nine local governments. We continue to work at expanding the conversion of paper submissions into electronic formats, for both individual units and central collection units. Since the 2003 annual collection cycle, all form types can be completed on the Internet. For the 2007 Census, 18,708 governments responded using the Web site.

III. Data

OMB Number: 0607-0452.

Form Number: E-1, E-2, E-3, E-4, E-5, E-6, E-7, E-9.

Type of Review: Regular submission.

Affected Public: State governments, county governments, consolidated city-county governments, independent cities, towns, townships, special district governments, and public school systems.

Estimated Number of Respondents: 18,160.

Estimated Time Per Response: 49 minutes.

Estimated Total Annual Burden

Hours: 14,733.

Estimated Total Annual Cost: \$324,347.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 United States Code, Section 161.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 6, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-17919 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the 2006-2007 Semiannual New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT:

Cindy Lai Robinson, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone:(202) 482-3797.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2007, the Department published a notice of initiation of antidumping duty new shipper reviews of certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"), covering the period August 1, 2006, through January 31,

2007. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews*, 72 FR 15653 (April 2, 2007).

Extension of Time Limit of Preliminary Results

The preliminary results for these new shipper reviews are currently due on September 22, 2007. *See* section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("Act"). The Department is extending the time limit for the completion of the preliminary results of these reviews by 90 days because the case is extraordinarily complicated. *Id.* The 2006-2007 semiannual new shipper reviews cover three companies and involve complicated affiliation and data issues, which require further analysis. Such analysis is necessary in order for the Department to obtain accurate sales and factors of production. In addition, because these are new shipper reviews, the Department needs to analyze *bona fide* issues with respect to the three respondents, which entails obtaining and analyzing entry data from U.S. Customs and Border Protection, and reviewing importer questionnaire responses. Furthermore, the Department needs additional time to analyze information pertaining to the respondents' sales practices, factors of production and corporate relationships. Finally, the Department intends to issue additional supplemental questionnaires to all three respondents.

Given the number and complexity of issues in this case, and in accordance with section 751(a)(2)(B)(iv) of the Act, we are extending the time period for issuing the preliminary results of review by 90 days until December 21, 2007. The final results continue to be due 90 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(2)(C)(3)(A) of the Act and section 351.214(h)(1) of the Department's regulations.

Dated: August 30, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-17987 Filed 9-11-07; 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 Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2007, the Department of Commerce ("the Department") published the preliminary results of its administrative and new shipper reviews of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China ("PRC"). 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) (*Preliminary Results*). Based on our analysis of the record, including information obtained since the preliminary results, we have made changes to the margin calculations for Yelin Enterprise Co. Hong Kong, and its affiliates. See Final Results of Review section, below.

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Erin Begnal, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1386 or (202) 482-1442, respectively.

Background

On March 9, 2007, the Department of Commerce ("the Department") published the preliminary results of its administrative and new shipper reviews of the antidumping duty order on certain frozen warmwater shrimp from the PRC, and invited parties to comment on the preliminary results. See *Preliminary Results*. The administrative review covers the following companies: (1) Yelin Enterprise Co., Ltd. Hong Kong ("Yelin"); (2) Allied Pacific Aquatic Products (Zhangjiang) Co., Ltd. ("Allied Pacific (Zhangjiang)"); (3) Allied Pacific (H.K.) Co., Ltd. ("Allied Pacific Hong Kong"); (4) Shantou Red Garden Foodstuff/Shantou Red Garden Food Processing Co. (collectively, "Red Garden"); (5) Meizhou Aquatic Products

Quick-Frozen Industry Co., Ltd. ("Meizhou"); (6) Zhoushan Huading Seafood Co., Ltd. ("Huading"); (7) Asian Seafoods (Zhanjiang) Co. ("Asian Seafoods"); and (8) Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd. ("Evergreen"). The new shipper review covers one producer/exporter: Hai Li Aquatic Co., Ltd. Zhao An, Fujian ("Hai Li"). See *Preliminary Results*. The period of review ("POR") for both the administrative and new shipper reviews is July 16, 2004, through January 31, 2006.

On March 22, 2007, we issued a supplemental questionnaire to Yelin, and received Yelin's response on April 5, 2007. On April 16, 2007, we received a case brief on behalf of the petitioner, the Ad Hoc Shrimp Trade Action Committee, re-submitted on April 30, 2007.¹ In addition, we received a case brief on behalf of Asian Seafoods on April 23, 2007. Additionally, we received a case brief on behalf of Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., Zhanjiang Allied Pacific Aquaculture Co., Ltd., Allied Pacific (H.K.) Co., Ltd., and King Royal Investments, Ltd., (collectively, "Allied Pacific Group") on April 23, 2007. We also received a case brief on behalf of Yelin Enterprise Co. Hong Kong and its affiliates, Shantou Yelin Frozen Seafood Co., Ltd., Yangjiang City Yelin Hoi Tat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Fuqing Minhua Trading Co., Ltd., and Ocean Duke Corporation (collectively, "Yelin") on April 23, 2007. We also received a case brief on April 23, 2007, on behalf of Zhanjiang Guolian Aquatic Products Co., Ltd., an interested party. On May 7, 2007, and on May 8, 2007, we received rebuttal briefs from the petitioner, Asian Seafoods, and Yelin.

Scope of the 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 (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), 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)

¹ On April 26, 2007, the Department requested that the petitioner re-submit its case brief to correct for bracketing. See Memorandum to the File From Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, dated April 26, 2007.

² "Tails" in this context means the tail fan, which includes the telson and the uropods.

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.

Separate Rates

Yelin, Allied Pacific (Hong Kong), Allied Pacific (Zhanjiang), and Evergreen have requested separate, company-specific antidumping duty rates. In our preliminary results, we found that they had each met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*. We have not received any information since the *Preliminary Results* with respect to Yelin, Allied Pacific (Hong Kong), Allied Pacific (Zhanjiang), and Evergreen which would warrant reconsideration of our separate-rates determinations with respect to these companies. Therefore, for these final results, we will continue to calculate company-specific separate rates for these respondents.

Partial Rescission of Administrative Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind the administrative review with respect to several companies that indicated they did not export certain frozen warmwater shrimp to the United States during the POR. Those companies are: Baofa Aquatic Products Co., Ltd.; Guangzhou Lingshan Aquatic Products; Ruian Huasheng Aquatic Products; Sealord North America; Shantou Ocean Freezing Industry and Trade General Corporation; Spectrum Plastics; Taizhou Zhonghuan Industrial Co., Ltd.; Yantai Xinlai Trade; Zhejiang Daishan Baofa Aquatic Products Co., Ltd.; Zhejiang Evernew Seafood Co., Ltd.; Zhejiang Zhenlong Foodstuffs Co., Ltd.; Zhoushan Guotai Aquatic Products Co., Ltd. (AKA Zhoushan Guotai Fisheries Co., Ltd.); Zhoushan Haichang Food Co.; Zhoushan Industrial Co., Ltd.;

Zhoushan Putuo Huafa Sea Products Co., Ltd.; and Zhoushan Zhenyang Developing Co., Ltd.

The Department is also rescinding the administrative review with respect to the following entities because the Department's quantity and value questionnaires sent to these companies were returned with undeliverable addresses: Allied Pacific Food; Allied Pacific Aquatic Products (Zhongshan) Co., Ltd.;³ Dhin Foong Trdg; Dongri Aquatic Products Freezing Plants Shengping; Dongshan Xinhefa Food; Evergreen Aquatic Product Science and Technology; Formosa Plastics; Fuchang Trdg; Fuqing City Dongyi Trdg; Fuqing Chaohui Aquatic Food Co., Ltd.; Fuqing Chaohui Aquatic Food Trdg.; Fuqing Dongyi Trading; Fuqing Fuchang Trading; Fuqing Longwei Aquatic Foodstuff; Fuqing Xuhu Aquatic Food Trdg; Gaomi Shenyuan Foodstuff; Guangxi Lian Chi Home Appliance Co; Hainan Jiadexin Aquatic Products Co., Ltd.; I T Logistics; Juxian Zhonglu Foodstuffs; Logistics Harbour Dock; Longwei Aquatic Foodstuff; Master International Logistics; Meizhou Aquatic Products; Nichi Lan Food Co. Ltd. Chen Hai; P&T International Trading; Perfection Logistics Service; Phoenix Seafood; Putuo Fahua Aquatic Products Co., Ltd.; Qingdao Dayang Jian Foodstuffs; Qinhuangdao Jiangxin Aquatic Food; Round the Ocean Logistics; Seatrade International; Second Aquatic Food; Second Aquatic Foodstuffs Pty; Shandong Chengshun Farm Produce Trd; Shandong Sanfod Group; Shantou Junyuan Pingyuan Foreign Trading; Shantou Sez Xuhoa Fastness Freeze Aquatic Factory; South Bay Intl; Taizhou Lingyang Aquatic Products Co., Ltd.; Tianhe Hardware & Rigging; Xiamen Sungiven Imports & Exports; Yantai Guangyuan Foods Co; Yantai Xuehai Foodstuffs; Yelin Frozen Seafood Co.; Zhanjiang CNF Sea Products Engineering, Ltd; Zhanjiang Fuchang Aquatic Products; Zhanjiang Jebshin Seafood Limited; Zhanjiang Shunda Aquatic Products; Zhejiang Zhongda; Zhejiang Taizhou Lingyang Aquatic Products Co.; Zhoushan Guangzhou Aquatic Products Co., Ltd.; Zhoushan International Trade Co., Ltd.; Zhoushan Provisions & Oil Food Export and Import Co., Ltd.; Zhoushan Xi'an Aquatic Products Co., Ltd.; and ZJ CNF Sea Products Engineering, Ltd. The Department sent quantity and value questionnaires to each of these companies twice, but the questionnaires were returned with undeliverable addresses. Additionally, the Department sent these questionnaires to the Chamber of Commerce and Ministry of

Commerce of the People's Republic of China, requesting them to forward these questionnaires to the companies, but the Department received no response. *See Memorandum to the File from Christopher D. Riker, Program Manager, AD/CVD Operations Office 9, R.E.: 2004/2006 Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, Subject: Inability to Contact Certain Companies Included in the Notice of Initiation*. Therefore, the Department is rescinding the review with respect to these companies, in accordance with our practice. *See Certain Steel Concrete Reinforcing Bars from Turkey: Preliminary results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455, 26457 (May 5, 2006).

Additionally, consistent with section 351.214(j) of the Department's regulations, the Department is rescinding the administrative review of Zhanjiang Regal because the Department has already reviewed all of the company's sales which were made during the POR in the context of a new shipper review. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review*, 71 FR 70362 (December 4, 2006). Furthermore, the Department is rescinding the administrative review of Shantou City Qiaofeng Group as this is the same company, but with a different name, as a company for which the administrative review has already been rescinded (*i.e.*, Chaoyang Qiaofeng Group Co., Ltd.). *See Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Enforcement, Office 9, from Michael Quigley, Case Analyst, AD/CVD Enforcement, Office 9, regarding 2004/2006 Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Shantou City Qiaofeng Group* (August 16, 2006). The Department received no comments on these issues, and we did not receive any further information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations.

Bona Fide Sale Analysis—Asian Seafoods & Hai Li

The Department also preliminarily rescinded the administrative review of Asian Seafoods and Hai Li due to the Department finding that the single sales made during the POR were not *bona fide*. The Department received comments from Asian Seafoods and the petitioner regarding the Department's preliminary *bona fides* determination

with respect to Asian Seafoods, and for the reasons stated below, we continue to find that Asian Seafood's reported U.S. sale during the POR does not appear to be a *bona fide* sale, based on the totality of the facts on the record. *See, e.g., Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, 69 FR 47405, 47406 (August 5, 2004). Specifically, we find that: (1) The sales price of Asian Seafoods' single POR sale; (2) irregularities relating to its customer correspondence; (3) atypical terms for the POR sale, and finally; (4) other indicia of a non-*bona fide* transaction, all demonstrate that the single sale under review was not *bona fide*. Therefore, this sale does not provide a reasonable or reliable basis for calculating a dumping margin.

Additionally, the Department received comments from Hai Li and the petitioner regarding the Department's preliminary *bona fides* determination with regard to Hai Li, and for the reasons stated below, we continue to find that Hai Li's reported U.S. sale during the POR does not appear to be a *bona fide* sale, based on the totality of the facts on the record. *See, e.g., Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, 69 FR 47405, 47406 (August 5, 2004). Specifically, we continue to find that: (1) The difference in the sales price of Hai Li's single POR sale as compared to the average unit value of suspended entries derived from CBP data; (2) the involvement of unaffiliated parties in Hai Li's single POR sale; (3) irregularities relating to packing materials, and finally, (4) other indicia of a non-*bona fide* transaction, all demonstrate that the single sale under review was not *bona fide*. Therefore, this sale does not provide a reasonable or reliable basis for calculating a dumping margin.

For the reasons mentioned above, the Department finds that Asian Seafood's and Hai Li's single U.S. sales during the POR were not *bona fide* commercial transactions and is rescinding the administrative review of Asian Seafoods, and the new shipper review of Hai Li. For a more detailed analysis, *see* Memorandum to David Spooner, Assistant Secretary for Import Administration, from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, regarding *Issues and Decision Memorandum for the*

Final Results of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews of Certain Frozen Warmwater Shrimp from the People's Republic of China (September 5, 2007) ("Issues and Decision Memorandum") at Comments 16 and 17.

Adverse Facts Available—Red Garden, Meizhou and Zhoushan Huading

For purposes of the *Preliminary Results*, the Department applied facts available to sales by Red Garden, Meizhou and Zhoushan Huading. No comments on this determination were submitted by any interested party. Therefore, for the reasons stated above, we find it appropriate, pursuant to sections 776(a)(2)(D) and 776(b) of the Tariff Act of 1930, as amended ("the Act"), to use adverse facts available ("AFA") as the basis for the final results of review for Red Garden, Meizhou, and Zhoushan Huading, which are part of the PRC-wide entity, as the Department was unable to verify their questionnaire responses concerning their eligibility for a separate rate. Consistent with the statute, court precedent, and its normal practice, the Department has assigned the rate of 112.81 percent to the PRC-wide entity (including Red Garden, Meizhou, and Huading), the highest rate from the petition in the LTFV investigation. *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). As discussed further below, this rate has been corroborated.

Furthermore, because Huading terminated verification and we found reimbursement of antidumping duties, the Department assigned Huading a rate inclusive of the PRC-wide entity rate and the reimbursement adjustment, or 225.62 percent. No comments were received regarding this determination.

Corroboration of Secondary Information

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as AFA the highest rate from any segment of this administrative proceeding, which is the rate currently applicable to all exporters subject to the PRC-wide rate. The AFA rate in the current review (*i.e.*, the PRC-

wide rate of 112.81 percent) represents the highest rate from the petition in the less than fair value ("LTFV") investigation. *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).

For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The AFA rate we are applying for the current review was corroborated in the LTFV investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (December 8, 2004). This is the first administrative review of this antidumping duty order. No information has been presented in the current review that calls into question the reliability of this information.

Analysis of Comments Received

In the case and rebuttal briefs received from the parties after the *Preliminary Results*, we received comments on several issues, including the surrogate values used to value raw shrimp, shrimp feed, overhead, selling, general and administrative expenses, and profit. All issues raised in the case briefs are addressed in the *Issues and Decision Memorandum*, which is hereby adopted by this notice. A list of the issues raised, all of which are in the *Issues and Decision Memorandum*, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum on file in the Central Records Unit ("CRU"), room B-099 of the Herbert C. Hoover Building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculation for Yelin.

Final Results of Review

We determine that the following antidumping duty margins exist:

CERTAIN FROZEN WARMWATER SHRIMP FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
Yelin Enterprise Co. Hong Kong	0.44
Allied Pacific Aquatic Products (Zhangjiang) Co., Ltd	4 53.68
Allied Pacific (H.K.) Co. Ltd	53.68
Zhanjiang Evergreen Aquatic Product Science and Technology Co. Ltd	53.68
Zhoushan Huading Seafood Co., Ltd	225.62
PRC-wide Rate (including Red Garden and Meizhou)	112.81

⁴ See *Preliminary Results* at 10654–10655 for a discussion of how the Department determined the separate rate margin for cooperative companies.

For details on the calculation of the antidumping duty margin for Yelin, see Memorandum to the File, through Scot T. Fullerton, Program Manager, from Erin C. Begnal, Senior International Trade Analyst, regarding *Certain Frozen Warmwater Shrimp from the People's Republic of China—Analysis Memorandum for the Final Results of Administrative Review of Yelin Enterprise Co. Hong Kong* (September 5, 2007). A public version of this memorandum is on file in the Central Records Unit.

Assessment of Antidumping Duties

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes for companies with a calculated rate, where possible, we calculated importer-specific assessment rates for certain frozen warmwater shrimp from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales during the POR. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposits

The following cash-deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equivalent to the company-specific weighted-average margin established in this review; (2) for PRC exporters who received a separate rate in a prior segment of the proceeding, but were not reviewed in this review, the cash deposit rate will continue to be the rate

assigned in that segment of the proceeding; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate (including Red Garden and Meizhou), the cash-deposit rate will be the PRC-wide rate of 112.81 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These reviews and notice are in accordance with sections 751(a)(1), 751(a)(2) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: September 5, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

General Issues

Comment 1: Shrimp Feed Valuation

Comment 2: Selection of Financial Statements

Comment 3: Adjustments to Surrogate Financial Ratios

A. Carriage and Freight

B. Labor-Related Expenses

Comment 4: Wage Rate

Comment 5: Refrigerated Truck Freight Valuation

Comment 6: Raw Shrimp Valuation

Comment 7: By-Product Surrogate Valuation

Comment 8: Clerical Error in Calculating the Raw Shrimp Surrogate Value

Company-Specific Issues

Comment 9: Yelin's Carton Consumption

Comment 10: Application of Partial Adverse Facts Available to Yelin

Comment 11: Ocean Duke's Reported Costs

A. Warehousing Expenses

B. Additional Ocean Duke Expenses

Comment 12: Multinational Corporation Provision

Comment 13: Valuation of Yelin's Purchased Raw Shrimp

Comment 14: Treatment of Guolian Aquatic Products

Comment 15: Treatment of Allied Pacific Group

Comment 16: The Bona Fides of Asian Seafoods' Single POR Sale

A. Price

B. Irregularities Regarding the Customer Correspondence Submitted in the Review

C. Atypical Terms of Sale

D. Other Indicia Of Non-Bona Fide Transaction

E. Calculation of Rate For Assessment Purposes

F. Assignment of the PRC-Wide Rate to Asian Seafoods

Comment 17: The Bona Fides of Hai Li's Single POR Sale

A. Price

B. Involvement of Third Parties in Hai Li's Sale

C. Irregularities Regarding Hai Li's Packaging Materials

D. Other Indicia of a Non-Bona Fide Transaction

E. Calculation of Rate For Assessment Purposes

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2007, the Department of Commerce (“the Department”) published in the **Federal Register** the preliminary results of the first administrative and new shipper reviews of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”). See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review*, 72 FR 10689 (March 9, 2007) (“*Preliminary Results*”). We gave interested parties an opportunity to comment on the *Preliminary Results*. Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. We find that certain manufacturers/exporters sold subject merchandise at less than normal value during the period of review (“POR”) July 16, 2004, through January 31, 2006. **EFFECTIVE DATE:** September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Nicole Bankhead or Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–9068 and (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 2007, we extended the time limit for the completion of the final results of these reviews, including our analysis of issues raised in case or rebuttal briefs, until September 5, 2007. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the People’s Republic of China, the Socialist Republic of Vietnam, and Thailand; Notice of Extension of Time Limit for Final Results of Administrative and New Shipper Reviews*, 72 FR 27286 (May 15, 2007).

We invited parties to comment on the *Preliminary Results*. On March 29, 2007, Grobest & I-Mei Industrial (Vietnam) Co., Ltd. (“Grobest”) and Petitioners¹ filed surrogate values. Grobest, Vietnam Fish One Co., Ltd. (“Fish One”), and Petitioners² filed case briefs on April

16, 2007, and rebuttal briefs on May 1, 2007.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the First Administrative Review and New Shipper Reviews, dated September 5, 2007, which is hereby adopted by this notice (“Issues and Decision Memo”). A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as an Appendix. The Issues and Decision Memo is a public document and is on file in the Central Records Unit CRU, Main Commerce Building, Room B–099, and is accessible on the Web at <http://www.trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of information on the record of these reviews, and comments received from the interested parties, we have made changes to the margin calculations for certain respondents.

We have revalued several of the surrogate values used in the *Preliminary Results*. The values that were modified for these final results are those for leaflets and surrogate financial ratios. For further details see Issues and Decision Memo at Comments 10 and 11 and Antidumping Duty Administrative and New Shipper Reviews of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Final Results, dated September 5, 2007. In addition, we have made some company-specific changes since the *Preliminary Results*. Specifically, we have incorporated, where applicable, post-preliminary clarifications, and performed clerical error corrections for both Grobest and Fish One. For further details on these company-specific changes, see Issues and Decision Memo at Comments 9 through 11.³

Scope of the 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,⁴ 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 order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), 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, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), 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 order. 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 order.

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) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp.

⁴ “Tails” in this context means the tail fan, which includes the telson and the uropods.

¹ *Ad Hoc* Shrimp Trade Action Committee.

² Petitioners re-filed their case brief on April 27, 2007, based on a letter issued by the Department requiring that they correct their bracketing. See Letter from Alex Villanueva to Brad Ward, Re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Refiling of Case Brief, dated April 23, 2007. The Department placed Petitioners’ case brief on the record of the new shipper review, as they originally only filed it on the record of the administrative review.

³ The specific calculation changes for Fish One can be found in Memorandum First Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Final Results of Vietnam Fish One Co., Ltd., dated September 5, 2007. The specific calculation changes for Grobest can be found in Memorandum First New Shipper Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Final Results of Grobest & I-Mei Industrial (Vietnam) Co., Ltd., dated September 5, 2007.

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 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 order are currently classified under the following HTSUS 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 HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Separate Rates

In our Preliminary Results, we determined that Fish One⁵ and Grobest,⁶ in addition to Nha Trang Fisco, Bac Lieu Fisheries, Cam Ranh Seafoods, and Incomfish,⁷ met the criteria for the application of a separate rate. We have not received any information or comments since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations. Therefore, the Department continues to find each of these entities meet the criteria for a separate rate.

Fish One

In the *Preliminary Results* we found that Fish One failed to act to the best of its ability to comply with the Department's requests for information regarding certain factors of production. We therefore applied partial adverse facts available, pursuant to section 776(a) and (b) of the Tariff Act of 1930, as amended ("the Act"), to Fish One for salt2 and marinade for the reasons set out in the *Preliminary Results*. See

⁵ The one mandatory participating respondent of this administrative review.

⁶ The new shipper company under review.

⁷ The non-selected respondents of this administrative review seeking a separate rate.

Preliminary Results, 72 FR at 10692. Fish One filed comments regarding the application of partial adverse facts available; however, we continue to find that partial adverse facts available is appropriate. See Issues and Decision Memorandum at Comment 8.

Final Results of the Reviews

The Department has determined that the following final dumping margins exist for the period July 16, 2004, through January 31, 2006:

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Manufacturer/exporter	Weighted-average margin (percent)
Produced and Exported by	
Grobest	0.00
Fish One	0.00
Nha Trang Fisco	⁸ 4.57
Bac Lieu Fisheries	4.57
Cam Ranh Seafoods	4.57
Incomfish	4.57
Vietnam-Wide Rate ⁹	25.76

The Department will disclose calculations performed for these final results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

⁸ See *Preliminary Results* at 10695 for a discussion of how the Department determined the separate rate margin for cooperative companies.

⁹ The Vietnam-Wide entity includes Aquatic Products Trading Company, Seaprodex Hanoi, Kisimex, Nha Trang Company Limited, Nha Trang Fisheries Co. Ltd., Seaprodex, Sea Products Imports & Exports, Song Huong ASC Import-Export Company Ltd., Song Huong ASC Joint Stock Company, Viet Nhan Company, and V N Seafoods.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Grobest, the cash-deposit rate will be that established in these final results of new shipper reviews; (2) for subject merchandise exported by Grobest but not manufactured by Grobest, the cash deposit rate will continue to be the Vietnamese-wide rate (*i.e.*, 25.76 percent); (3) for the other exporters listed above, the cash deposit rate will be established in these final results of review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (4) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (5) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnamese-wide rate of 25.76 percent; and (6) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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 as explained in the administrative protective order itself. 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.

This notice of final results of this administrative review and new shipper review are issued and published in accordance with sections 751(a)(2)(C) and 777(i) of the Act and 19 CFR 351.221(b)(5) and 351.214(j).

Dated: September 5, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

I. General Issues

Comment 1: Shrimp Surrogate Value

Comment 2: Surrogate Financial Companies

A. Multiple Financial Statements from a Single Company

B. Zero/Negative Profit

C. Subsidies

Comment 3: Zeroing

Comment 4: Exclusion of "Aberrational"

Bangladeshi Import Data from Surrogate Values

Comment 5: Surrogate Value for Labor

Comment 6: By-Product Surrogate Value

Comment 7: Truck Freight Surrogate Value

II. Company-Specific Issues

Comment 8: Application of Partial Adverse Facts Available to Fish One's "Salt2" and Marinade Factors of Production

Comment 9: Leaflet Surrogate Value for Fish One

Comment 10: Fish One's STPP Calculation

Comment 11: Grobest's Shrimp Surrogate Value

[FR Doc. E7-17991 Filed 9-11-07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-840]

Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India. This review covers 70 producers/exporters of the subject merchandise to the United States. The period of review (POR) is August 4, 2004, through January 31, 2006. We are rescinding the review with respect to four companies because these companies had no

reportable shipments of subject merchandise during the POR.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-3874.

SUPPLEMENTARY INFORMATION:

Background

This review covers 70 producers/exporters.¹ The respondents which the Department selected for individual review are Devi Marine Food Exports Private Limited, Kader Investment and Trading Company Private Limited, Premier Marine Products, Kader Exports Private Limited, Universal Cold Storage Private Limited, and Liberty Frozen Foods Private Limited (collectively, "the Liberty Group"); Falcon Marine Exports Limited (Falcon); and Hindustan Lever Limited (HLL). The respondents which were not selected for individual review are listed in the "Final Results of Review" section of this notice.

On March 9, 2007, the Department published in the *Federal Register* the preliminary results of administrative review of the antidumping duty order on shrimp from India. See *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10658 (March 9, 2007) (*Preliminary Results*).

In April 2007, we received a certification of accuracy from a company official employed at Kadalkanny Frozen Foods (Kadalkanny) related to Kadalkanny's April 28, 2006, quantity and value (Q&V) questionnaire response. Because Kadalkanny provided an adequate explanation as to why the Department did not receive this in a timely manner, we accepted it as a one-time exception. For further discussion, see the "Facts Available" section of this notice, below.

We invited parties to comment on our preliminary results of review, as well as on the additional information noted

¹ This figure does not include those companies for which the Department is rescinding the administrative review.

above. In April and May 2007, we received case and rebuttal briefs from the petitioner (*i.e.*, the Ad Hoc Shrimp Trade Action Committee) and the respondents (*i.e.*, Falcon, HLL, and the Liberty Group).

On May 29, 2007, we held a hearing at the request of Falcon, HLL, and the Liberty Group.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the 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 order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), 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, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), 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 order. 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 order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS

² "Tails" in this context means the tail fan, which includes the telson and the uropods.

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 (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) 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 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 order are currently classified under the following HTSUS 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 HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is August 4, 2004, through January 31, 2006.

Partial Rescission of Review

Four of the companies that responded to the Department's Q&V questionnaire stated that they had no shipments/entries of subject merchandise into the United States during the POR. These companies are Balaji Seafoods Exports (India) Ltd., Innovative Foods Limited, Sharat Industries Limited, and Triveni Fisheries Pvt. Ltd. However, based on information obtained from U.S. Customs and Border Protection (CBP), it appeared that these companies did, in fact, have shipments or entries of subject merchandise entered into the

United States during the POR. As a result, we requested that each of these companies explain the entries in question.

In response to the Department's solicitation, the companies demonstrated that the entries at issue were not reportable transactions because they were either: 1) a non-paid sample; or 2) reported by another company in its Q&V response based on knowledge of destination. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are rescinding our review with respect to Balaji Seafoods Exports (India) Ltd., Innovative Foods Limited, Sharat Industries Limited, and Triveni Fisheries Pvt. Ltd. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005) (where we rescinded the administrative review for companies that demonstrated they had no shipments during the POR).

Successor-in-Interest

As noted in the *Preliminary Results*, in April 2006, one of the producers/exporters named in the notice of initiation, Coastal Corporation Ltd. (Coastal Corp.), informed the Department that, prior to the POR, it operated under the name Coastal Trawlers Limited (Coastal Trawlers). Based on Coastal Corp.'s submission addressing the four factors with respect to this change in corporate structure (*i.e.*, management, production facilities for the subject merchandise, supplier relationships, and customer base),³ in the preliminary results we preliminarily found that Coastal Corp.'s organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Further, we found that Coastal Corp. operates as the same business entity as Coastal Trawlers with respect to the production and sale of shrimp. Therefore, we preliminarily determined that Coastal Corp. was the successor-in-interest to Coastal Trawlers. *See Preliminary Results*, 72 FR at 10660–61.

Since the preliminary results, we requested additional information from

³ *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 70 FR 50299, 50300-01 (Aug. 26, 2005) (setting forth the four factors to be considered for successorship determinations), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 70 FR 54721 (Oct. 13, 2005).

Coastal Corp. to substantiate its assertions regarding the four factors. Although Coastal Corp. did respond to the Department's requests for further information, this response was neither properly filed nor accompanied by a public version, as required by 19 CFR 351.304(c). Thus, we are unable to consider this information for purposes of the final results. As a result, we find that there is insufficient evidence on the record to support our preliminary finding that Coastal Corp. is the successor-in-interest to Coastal Trawlers, and thus we have treated these companies as separate entities for purposes of this administrative review. Because the companies responded to the Department's request for Q&V data in this review, we have assigned both Coastal Corp. and Coastal Trawlers the review-specific average rate as separate entities.

Facts Available

In the preliminary results, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for the following producer/exporters: Amison Foods Ltd., Amison Seafoods Ltd., Baby Marine (Eastern) Exports, Baby Marine Exports, and Baby Marine Products Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Kadalkanny Frozen Foods, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, R F. Exports, and Vaibhav Sea Foods (Vaibhav). *See Preliminary Results*, 72 FR at 10661–62.

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

In April 2006, the Department requested that all companies subject to review respond to the Department's Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 28, 2006. Because numerous companies did not respond to this initial request for information, in May 2006 the Department issued letters to these companies affording them a second opportunity to submit a response to the Department's Q&V

questionnaire. However, the following companies failed to respond to the Department's second request for Q&V data: Amison Foods Ltd., Amison Seafoods Ltd., Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, R F. Exports, and Vaibhav. On February 6, 2007, the Department placed documentation on the record confirming delivery of the questionnaires to each of these companies. See the Memorandum to the File from Elizabeth Eastwood entitled, "Placing Delivery Information on the Record of the 2004–2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India," dated February 6, 2007. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department's questionnaire, the Department preliminarily found that the use of total facts available was warranted.

Furthermore, three additional companies (*i.e.*, Baby Marine (Eastern) Exports, Baby Marine Exports, and Baby Marine Products) claimed that they made no shipments of subject merchandise to the United States during the POR. Because we were unable to confirm the accuracy of their claims with CBP, we requested further information/clarification from these exporters. However, these companies failed to provide the requested information.

By failing to respond to the Department's requests, these companies withheld requested information and significantly impeded the proceeding. Therefore, as in the preliminary results, the Department finds that the use of total facts available for Amison Foods Ltd., Amison Seafoods Ltd., Baby Marine (Eastern) Exports, Baby Marine Exports, and Baby Marine Products, Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, and R F. Exports is appropriate pursuant to sections 776(a)(2)(A) and (C) of the Act. See *Preliminary Results*, 72 FR at 10661–62.

However, we are reversing our preliminary decision to base the margin for Vaibhav on total facts available. In

the preliminary results, we assigned Vaibhav a margin based on total facts available because the company did not respond to the Department's Q&V questionnaire. In its case brief, Vaibhav provided information documenting that it did not respond to the Q&V questionnaire because the company never received it. In fact, Vaibhav demonstrated that it ceased operations before the date on which Federal Express delivered the Q&V questionnaire to it. Because we find that Vaibhav has demonstrated that its failure to respond to the Department's Q&V questionnaire was due to circumstances beyond its control, we are reversing our preliminary decision to base the margin for Vaibhav on total facts available. Thus, we are now assigning Vaibhav the review-specific average rate. For further discussion, see the Issues and Decision Memorandum (the Decision Memo) at Comment 10.

Finally, we are also reversing our preliminary decision to base the margin for Kadalkanny on total facts available. In the preliminary results, we assigned Kadalkanny a margin based on total facts available because the company failed to properly file its Q&V questionnaire response when it did not submit a company official certification either with its submission or in response to the Department's subsequent request that it do so. On April 10, 2007, we received the certification of accuracy Kadalkanny related to Kadalkanny's April 28, 2006, Q&V questionnaire response. In this submission, Kadalkanny informed the Department that it intended to send the required certification of accuracy via Federal Express, where it could be tracked; however, a company employee instead inadvertently sent the document via Indian first-class mail and thus Kadalkanny was unaware that the Department had not received its certification until the preliminary results. Because we find Kadalkanny's explanation adequate, we accepted Kadalkanny's submission pursuant to 19 CFR 351.302(b). Thus, we now have a copy of Kadalkanny's certification of accuracy on the record of this administrative review and we are reversing our preliminary decision to base the margin for Kadalkanny on total facts available. Consequently, we are now assigning Kadalkanny the review-specific average rate.

Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested

party failed to cooperate by not acting to the best of its ability to comply with the request for information. See, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); see also *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1 (1994), at 870. Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). See also, *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We find that Amison Foods Ltd., Amison Seafoods Ltd., Baby Marine (Eastern) Exports, Baby Marine Exports, and Baby Marine Products Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, and R F. Exports did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Therefore, an adverse inference is warranted in selecting facts otherwise available. See *Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792, 55796 (Aug. 30, 2002); see also *Notice*

of *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned a rate of 82.30 percent, which was the lowest rate alleged in the petition, as adjusted at the initiation of the less-than-fair-value (LTFV) investigation, to Amison Foods Ltd., Amison Seafoods Ltd., Baby Marine (Eastern) Exports, Baby Marine Exports, and Baby Marine Products Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, and R F. Exports.⁴ The Department finds that this rate is sufficiently high as to effectuate the purpose of the AFA rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

For the reasons stated in the *Preliminary Results*, we continue to find that the information upon which this margin is based has probative value and thus satisfies the corroboration requirements of section 776(c) of the Act. *See Preliminary Results*, 72 FR at 10662–63. *See also* the September 5, 2007, memorandum from Nichole Zink to the file entitled, “Corroboration of Adverse Facts Available Rate for the Final Results in the 2004–2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India.”

Collapsing the Liberty Group and Liberty Oil Mills Limited (LOML)

The Liberty Group has an affiliate, LOML, which exported some of the shrimp produced by the Liberty Group during the POR. In its August 9, 2006, section A response, as well as its February 15, 2007, response and at verification, the Liberty Group provided information regarding the relationship between these entities during the POR. After an analysis of this information, we preliminarily determined that, in accordance with 19 CFR 351.401(f), it is appropriate to collapse these entities for purposes of this review because: 1) certain of the directors of LOML are also directors of Liberty Group companies, and the family which owns the Liberty Group owns a majority of the shares in LOML; 2) LOML exported shrimp

produced by the Liberty Group to the United States during the POR; and 3) the operations of LOML and the Liberty Group are intertwined. *See* 19 CFR 351.401(f)(2). Thus, in our preliminary results, we found that there is significant potential for manipulation of price if LOML does not receive the same antidumping duty rate as the Liberty Group. For further discussion, see the *Preliminary Results*, 72 FR at 10661.

Since the preliminary results, no party to this proceeding has commented on this issue and we have found no additional information that would compel us to reverse our preliminary finding. Thus, we continue to find that it is appropriate to collapse these entities for purposes of this review.

Cost of Production/Constructed Value (CV)

As discussed in the preliminary results, we conducted an investigation to determine whether Falcon, HLL, and the Liberty Group made third country sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. For these final results, we performed the cost test following the same methodology as in the *Preliminary Results*, except as discussed in the Decision Memo.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in “substantial quantities” within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B) - (D) of the Act.

Therefore, for purposes of these final results, we found that Falcon, HLL, and the Liberty Group made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value (NV) pursuant to section 773(b)(1) of the Act.

Based on the results of the cost test for Falcon and in accordance with section 773(a)(4) of the Act, we are now basing NV on CV for certain products when we were unable to compare Falcon's U.S. sales to a comparison market sale of an identical or similar product. In calculating CV, we relied on the data reported by Falcon, adjusted as

described in the *Preliminary Results* and the Decision Memo. We calculated a weighted-average CV based on the sum of the Falcon's materials and fabrication costs, selling, general, and administrative (SG&A) expenses, including interest expenses, packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Falcon in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the comparison market. We based selling expenses on weighted-average actual comparison market direct and indirect selling expenses.

We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to export price, we made circumstance-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period August 4, 2004, through January 31, 2006:

⁴ We note that we were unable to corroborate the other margins alleged in the petition, and thus we

were unable to consider them as acceptable sources

of facts available information. For further discussion, see *Preliminary Results*, 72 FR at 10662.

Manufacturer/Producer/Exporter	Margin Percentage
Falcon Marine Exports Limited	4.39
Hindustan Lever Limited	18.83
The Liberty Group (Devi Marine Food Exports Private Limited,	4.03
Kader Investment and Trading Company Private Limited,, Premier Marine Products, Kader Exports Private Limited,, Universal Cold Storage Private Limited, Liberty Frozen. Foods Private Limited) and Liberty Oil Mills Limited. Review-Specific Average Rate Applicable to the Following Companies: ⁵ .	

⁵This rate is based on the weighted average of the margins calculated for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on AFA.

Manufacturer/Exporter	Percent Margin
Allanasons Ltd.	7.22
Amalgam Foods & Beverages Limited	7.22
Amulya Seafoods	7.22
Ayshwarya Seafood Private Limited	7.22
Baby Marine International	7.22
Baraka Overseas Traders	7.22
Bhatsons Aquatic Products	7.22
Calcutta Seafoods	7.22
Castlerock Fisheries Ltd.	7.22
Coastal Corporation Ltd.	7.22
Coastal Trawlers Ltd.	7.22
Cochin Frozen Food Exports Pvt. Ltd.	7.22
Coreline Exports	7.22
Gajula Exim P Ltd.	7.22
Haripriya Marine Food Exports	7.22
IFB Agro Industries Ltd. (Aquatic & Marine Products Div.)	7.22
ITC Ltd.	7.22
K R M Marine Exports Ltd.	7.22
Kadalkanny Frozen Foods	7.22
Kalyanee Marine	7.22
Kings Marine Products	7.22
Konark Aquatics & Exports Pvt. Ltd.	7.22
MSC Marine Exporters	7.22
Magnum Estate Private Limited	7.22
Magnum Exports	7.22
Magnum Seafoods Pvt. Ltd.	7.22
Mangala Marine Exim India Pvt. Ltd.	7.22
Mangala Sea Products	7.22
N.G.R Aqua International	7.22
Navayuga Exports Ltd.	7.22
Nila Seafoods Pvt. Ltd.	7.22
Penver Products (P) Ltd.	7.22
Raa Systems Pvt. Ltd.	7.22
Raju Exports	7.22
Ram's Assorted Cold Storage Ltd.	7.22
Saanthi Seafoods Ltd.	7.22
Seagold Overseas Pvt. Ltd.	7.22
Sri Chandranantha Marine Exports, Ltd.	7.22
Sri Sakthi Marine Products P Ltd.	7.22
Sun-Bio Techonology Limited	7.22
Suvarna Rekha Exports Private Limited	7.22
Survarna Rekha Marines P Ltd.	7.22
Uniroyal Marine Exports Ltd.	7.22
Vaibhav Sea Foods	7.22
Veejay Impex	7.22
Victoria Marine & Agro Exports Ltd.	7.22
AFA Rate Applicable to the Following Companies:.	

Manufacturer/Exporter	Percent Margin
Amison Foods Ltd.	82.30
Amison Seafoods Ltd.	82.30
Baby Marine (Eastern) Exports	82.30
Baby Marine Exports	82.30
Baby Marine Products	82.30
Cherukattu Industries (Marine Div)	82.30
Global Sea Foods & Hotels Ltd	82.30
HA & R Enterprises	82.30
InterSea Exports Corporation	82.30
Lotus Sea Farms	82.30

Manufacturer/Exporter	Percent Margin
National Steel	82.30
National Steel & Agro Ind	82.30
Nsil Exports	82.30
Premier Marine Foods	82.30
R F. Exports	82.30

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), for Falcon, HLL, and the Liberty Group, because these companies reported the entered value for some of their U.S. sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales which entered value was reported. For Falcon, HLL, and the Liberty Group's U.S. sales reported without entered values, we have calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the estimated entered value.

For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the

United States. This clarification will also apply to POR entries of subject merchandise produced by companies for which we are rescinding the review based on certifications of no shipments, because these companies certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the LTFV investigation if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of shrimp from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, 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 merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147, 5148 (Feb. 1, 2005). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries

during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only 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 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 of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 5, 2007.

David M. Spooner,
Assistant Secretary for Import
Administration.

Appendix Issues in Decision Memorandum

General Issues

1. Offsetting of Negative Margins
2. Ministerial Errors in the Preliminary Results

Company-Specific Issues

3. Calculation of the Weighted-Average Payment Date for One of Falcon's U.S. Sales
4. Reallocation of Falcon's Costs for Cultivating Shrimp
5. Calculation of Per-Unit Packaging Costs for Falcon
6. Calculation of HLL's General and Administrative Expense Ratio
7. Calculation of HLL's Net Interest Expense Ratio
8. Valuing the Cold Storage Services Provided to the Liberty Group by Liberty Cold Storage Private Limited
9. Collapsing of all Liberty Group Entities for Purposes of Calculating the Group's Interest Expense Ratio
10. Whether to Based the Final Margin for Vaibhav on AFA
11. Whether to Base the Final Margin for National Steel and Agro Industries Ltd.

and NSIL Exports Limited of India on AFA

12. Whether to Assess at the Antidumping Rate of the Producer Where a Producer Sells through an Exporter

[FR Doc. E7-18006 Filed 9-11-07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-838]

Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Brazil. This review covers 11 producers/exporters of the subject merchandise to the United States. The period of review (POR) is August 4, 2004, through January 31, 2006. We are rescinding the review with respect to three companies. One company was inadvertently omitted from the list of companies for which the administrative review was rescinded in July 2006, and the other two companies were duplicate names for a company for which the administrative review was also rescinded in July 2006.

Based on our analysis of the comments received, we have made certain changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-4929 and (202) 482-4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 11 producers/exporters.¹ The respondents which the Department selected for individual review are Aquatica Maricultura do Brasil Ltda ("Aquatica") and Comercio de Pescado Aracatiense Ltda. ("Compescal"). The respondents which were not selected for individual review are listed in the "Final Results of Review" section of this notice. On March 9, 2007, the Department published in the *Federal Register* the preliminary results of administrative review of the antidumping duty order on shrimp from Brazil. See *Certain Frozen Warmwater Shrimp from Brazil: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10680 (March 9, 2007) (Preliminary Results).

We invited parties to comment on our preliminary results of review. On April 23, 2007, we received case briefs from the mandatory respondents (*i.e.*, Aquatica and Compescal) and Valença da Bahia Maricultura (Valença), a respondent which was not selected for individual review. On May 7, we received a rebuttal brief from the petitioner (*i.e.*, the Ad Hoc Shrimp Trade Action Committee). On May 31, 2007, we held a hearing at the request of Aquatica and Compescal.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the 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 order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), 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, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), 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 order. 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 order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS 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 (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) 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 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 order are currently classified under the following HTSUS 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,

¹ This figure does not include those companies for which the Department is rescinding the administrative review.

² "Tails" in this context means the tail fan, which includes the telson and the uropods.

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 HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is August 4, 2004, through January 31, 2006.

Partial Rescission of Review

In the *Preliminary Results*, we preliminarily rescinded this review with respect to Artico, Marine Maricultura do Nordeste SA, and Marine Maricultura Nordeste SA.

Artico was inadvertently omitted from the list of companies for which the administrative review was rescinded in July 2006. Artico has the same address as Ortico, which was included in our earlier rescission notice. Accordingly, we consider Artico and Ortico to be the same company.

In addition, as a result of additional research, we confirmed that Marine Maricultura do Nordeste SA, Marine Maricultura do Nordeste, and Marine Maricultura Nordeste SA are, in fact, the same company, and that the correct company name is Marine Maricultura do Nordeste SA, which is no longer in business. We rescinded the administrative review with respect to Marine Maricultura do Nordeste in July 2006, as a result of the petitioner's timely withdrawal of the request for review of this company.

For these reasons, we are rescinding this review with respect to Artico, Marine Maricultura do Nordeste SA, and Marine Maricultura Nordeste SA.

Facts Available

In the *Preliminary Results*, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for SM Pescados Industria Comercio E Exportacao Ltda. (SM Pescados) and Valenca da Bahia Maricultura S.A. (Valenca). See *Preliminary Results* at 10682–83.

Section 776(a) of the Act provides that the Department will apply “facts otherwise available” if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or

4) provides such information, but the information cannot be verified.

In April 2006, the Department requested that all companies subject to review respond to the Department's quantity and value (Q&V) questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 28, 2006. Because numerous companies did not respond to this initial request for information, in May 2006 the Department issued letters to these companies affording them a second opportunity to submit a response to the Department's Q&V questionnaire. However, both SM Pescados and Valenca failed to respond to the Department's second request for Q&V data. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department's questionnaire, the Department preliminarily found that the use of total facts available was warranted. See *Preliminary Results* at 10682–83.

By failing to respond to the Department's requests, these companies withheld requested information and significantly impeded the proceeding. Therefore, as in the *Preliminary Results*, the Department finds that the use of total facts available for SM Pescados and Valenca is appropriate for purposes of the final results, pursuant to sections 776(a)(2)(A) and (C) of the Act.

Application of Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); see also *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994). Furthermore, “affirmative evidence of bad faith on the part of a

respondent is not required before the Department may make an adverse inference.” See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). See also, *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We find that SM Pescados and Valenca did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Therefore, an adverse inference is warranted in selecting the facts otherwise available. See *Nippon*, 337 F.3d at 1382–83.

In the *Preliminary Results*, we assigned to the uncooperative companies an adverse facts available (AFA) rate of 349 percent, which is the highest rate alleged in the petition, and which we were able to corroborate against the preliminary transaction-specific margins calculated for the mandatory respondents in this administrative review. However, given the changes made to the margin calculations for the mandatory respondents since the *Preliminary Results*, we are no longer able to corroborate the petition margins using this method, as discussed below. Therefore, for the final results, we have applied an AFA margin of 67.80 percent, which is the highest rate calculated for any respondent in a prior segment of the proceeding (*i.e.*, the less-than-fair-value (LTFV) investigation). The Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld this approach. See *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in an LTFV investigation).

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse “as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

In selecting an appropriate AFA rate, the Department considered: 1) the rates alleged in the petition (*see Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 FR 3876, 3879 (January 27, 2004)); 2) the rates calculated in the final determination of the LTFV investigation, which ranged from 9.69 to 67.80 percent (*see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil*, 70 FR 5143 (February 1, 2005) (*LTFV Amended Final Determination and Order*)); and 3) the rates calculated in the current administrative review. As discussed further below, we no longer find that the rates alleged in the petition have probative value for purposes of this review. In addition, we find that the rates calculated for the respondents in this review are not sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we do not find that these rates are high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). Therefore, we have assigned a rate of 67.80 percent as AFA, which is the highest margin determined for any respondent in any segment of the proceeding (*i.e.*, the LTFV investigation).³ We consider the 67.80-percent rate to be sufficiently high so as to encourage participation in future segments of this proceeding.

Corroboration

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available from independent sources reasonably at its disposal. The Department's regulations provide that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d); *see also* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316 at 870 (1994) (SAA). With respect to consideration of the rates alleged in the petition, information from

prior segments of the proceeding constitutes secondary information and to the extent practicable, the Department will examine the reliability and relevance of the information to be used.

For purposes of the final results, we did not use either of the two highest of the three petition rates (*i.e.*, 320 percent and 349 percent) because we were unable to corroborate them with independent information reasonably at our disposal, *i.e.*, the transaction-specific margins in the current administrative review. We did not use the remaining petition rate (*i.e.*, 32 percent) because it was lower than the selected AFA rate, and as such would not accomplish the objectives of AFA, stated above. Moreover, we have an alternative that we find to be sufficiently adverse to effectuate the purpose of the AFA provision of the statute.

The reliability of the selected AFA rate was determined by the calculation of the margin for Norte Pesca, as published in the *LTFV Amended Final Determination and Order*. With respect to corroboration of a rate calculated in a segment of a proceeding, we note that, unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive dumping margins. The only source for calculated dumping margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 44283, 44284 (July 28, 2003) and *Anhydrous Sodium Metasilicate from France: Final Results of Antidumping Duty Administrative Review*, 68 FR 60080 (October 21, 2003) (unchanged in final). Therefore, given that we are using the highest margin calculated for any respondent in any segment of the proceeding, it is not necessary to question the reliability of this rate. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. However, because neither SM Pescados nor Valença submitted information to the Department or participated in a previous segment of this proceeding, we do not have information specific to the two companies to consider in determining whether the 67.80-percent margin is relevant to each of them.

Therefore, to determine whether the 67.80-percent margin is relevant in this administrative review, we compared this rate to the transaction-specific rates calculated for each mandatory respondent in this review. Based on this comparison, we find that the selected AFA rate is relevant because it fell within the range of individual transaction margins calculated for one of the mandatory respondents. *See* Memorandum to The File from Kate Johnson and Rebecca Trainor entitled "Corroboration of Adverse Facts Available Rate for the Final Results in the 2004-2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil," dated September 5, 2007. *See also Notice of Preliminary Results of Antidumping Duty Administrative Review; Partial Rescission and Postponement of Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964, 33968 (June 12, 2006).

The Department will, however, consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin). For the instant review, we examined whether any information on the record would discredit the selected rate as reasonable facts available and have found none. Because we did not find evidence indicating that the margin selected as AFA in this review is not appropriate, we have determined that the highest margin calculated for any respondent in any segment of the proceeding (*i.e.*, 67.80 percent) is appropriate to use as AFA, and are assigning this rate to SM Pescados and Valença in the final results of this review.

Aquatica's Affiliated Parties

Aquatica provided information regarding the relationship between Aquatica and its two affiliated producers/exporters of subject

³ This margin was based on the rate we calculated for respondent Norte Pesca S.A. in the preliminary determination of the LTFV investigation, based on information it submitted in its questionnaire responses. Although this company withdrew from the investigation after the preliminary determination, this rate was used as the AFA rate in the final determination. *See LTFV Amended Final Determination and Order*.

merchandise at issue during the POR.⁴ After an analysis of this information, as well as information obtained as a result of additional research, we preliminarily determined that, in accordance with 19 CFR 351.401(f), it is not appropriate to collapse these affiliated entities for purposes of this review because: 1) there is no common ownership among the companies; 2) no managerial employees or board members of one firm are associated with any of the other firms; 3) there is no sharing of sales information, involvement in pricing and production decisions, sharing of facilities or employees, or significant transactions between and among the affiliated producers. Thus, there is no potential for manipulation of price or production if Aquatica and its affiliates do not receive the same antidumping duty rate. *See Preliminary Results*, 72 FR at 10682.

Since the *Preliminary Results*, no party to this proceeding has commented on this issue and we have found no additional information that would compel us to reverse our preliminary finding. Thus, for purposes of these final results, we continue to find that it is not appropriate to collapse these entities for purposes of this review.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation

to determine whether Aquatica and Compescal made third country or home market sales, respectively, of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the Issues and Decision Memorandum accompanying this notice (the Decision Memo).

For both Compescal and Aquatica, we found that 20 percent or more of comparison market sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B) - (D) of the Act. Therefore, for purposes of these final results, we found that both respondents made below-cost sales not in the ordinary course of trade during the POR. Consequently, we disregarded these sales and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period August 4, 2004, through January 31, 2006:

Manufacturer/Exporter	Percent Margin
Aquatica Maricultura do Brasil Ltda./Aquafeed do Brasil Ltda.	4.62
Compescal - Comercio de Pescado Aracatiense Ltda.	15.41
Review-Specific Average Rate Applicable to the Following Companies: ⁵	

⁵ This rate is based on the weighted average of the margins calculated for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on AFA.

Manufacturer/Exporter	Percent Margin
Amazonas Industrias Alimenticias - AMASA	6.96
Bramex Brasil Mercantil S.A.	6.96
Guy Vautrin Importacao & Exportacao	6.96
ITA Fish-S.W.F. Importacao E Exportacao Ltda.	6.96
JK Pesca Ltda.	6.96
Lusomar Maricultura Ltda.	6.96
Santa Lavinia Comercio E Exportacao Ltda.	6.96
AFA Rate Applicable to the Following Companies:	

Manufacturer/Exporter	Percent Margin
SM Pescados Industria Comercio E Exportacao Ltda.	67.80
Valenca da Bahia Maricultura SA	67.80

Assessment

The Department shall determine, and Customs and Border Protection (CBP)

shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), for Aquatica and Compescal, because they

did not report the entered value of their U.S. sales, we have calculated importer-specific per-unit duty assessment rates by aggregating the total amount of

⁴ Based on information submitted in Aquatica's questionnaire responses, as well as information

obtained at verification, we have accepted Aquatica's claim that its operations are intertwined

with those of Aquafeed such that they essentially function as one company.

antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the estimated entered value. For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the weighted-average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). See 19 CFR 351.106(c)(1). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the "All Others" rate established in the LTFV investigation if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of shrimp from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for the reviewed companies will be the rates shown

above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, 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 merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.05 percent, the "All Others" rate established in the LTFV investigation. These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only 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 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 final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: September 5, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

General Issues

1. Offset for Productivity Losses from Viral Infection
2. Zeroing Negative Margins

Company-Specific Issues

Compesal:

3. Calculation of Offset for Losses from Viral Infection
4. Calculation of Constructed Value Profit
5. Depreciation on Fixed Asset Revaluations
6. Treatment of Prime Quality Shrimp

Aquatica:

7. Adjustment Methodology for Losses from Viral Infection
8. Aquatica's Shrimp Cost Allocation Methodology
9. Changes in Inventories in Cost Calculation
10. Purchases from Affiliates
11. CV Profit and Selling Rates
12. Foreign Exchange Loss
13. Treatment of Broken Shrimp

Valença:

14. Adverse Facts Available Rate Assigned to Valença da Bahia Maricultura S.A.
15. Corroboration of the Adverse Facts Available Rate Assigned to Valença da Bahia Maricultura S.A.

[FR Doc. E7-18009 Filed 9-11-07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-822]

Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand. This review covers 24 producers/exporters of the subject merchandise to the United States. The period of review (POR) is August 4, 2004, through January 31, 2006. We are rescinding the review with respect to five companies because these companies had no reportable shipments of subject merchandise during the POR.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed

below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-0656.

SUPPLEMENTARY INFORMATION:

Background

This review covers 24 producers/exporters.¹ The respondents which the Department selected for individual review are Good Luck Product Co., Ltd. (Good Luck Product); Pakfood Public Company Limited and its affiliated subsidiaries, Asia Pacific (Thailand) Company Limited, Chaopraya Cold Storage Company Limited, Okeanos Company Limited, and Takzin Samut Company Limited (collectively "Pakfood"); and Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei). The respondents which were not selected for individual review are listed in the "Final Results of Review" section of this notice.

On March 9, 2007, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from Thailand. See *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10669 (Mar. 9, 2007) (Preliminary Results).

On March 12, 2007, we received a quantity and value (Q&V) questionnaire response from Fortune Frozen Foods (Thailand) Co., Ltd. (Fortune Frozen Foods). Because Fortune Frozen Foods: 1) had previously submitted a timely Q&V questionnaire response that was rejected by the Department due to procedural deficiencies; and 2) provided an adequate explanation as to why the Department did not receive its re-filed Q&V questionnaire response in a timely manner, we accepted Fortune Frozen Foods' Q&V questionnaire response. For further discussion, see the "Facts Available" section of this notice, below.

In addition, on March 12 and 14, 2007, Anglo-Siam Seafoods Co., Ltd. (Anglo-Siam Seafoods) contacted the Department regarding the rate based on adverse facts available (AFA) that it was assigned in the preliminary results. Further on March 27, 2007, Gallant Ocean (Thailand) Co., Ltd. (Gallant Ocean), which also was assigned a rate

based on AFA in the preliminary results, submitted a Q&V questionnaire response. However, because Anglo-Siam Seafoods and Gallant Ocean had not attempted to respond to the Department's Q&V questionnaire prior to the deadline, we informed them that the deadline for submitting new factual information had passed and we would not accept their Q&V questionnaire responses. On April 2, 2007, we returned Gallant Ocean's Q&V questionnaire response. For further discussion, see the "Facts Available" section of this notice, below.

We invited parties to comment on our preliminary results, as well as on the additional information noted above. In April 2007, we received case briefs from the petitioner (i.e., the Ad Hoc Shrimp Trade Action Committee), Fortune Frozen Foods, Gallant Ocean, Good Luck Product, Pakfood, and Thai I-Mei. In May 2007, we received rebuttal briefs from the petitioner, Pakfood, Surapon Nichirei Foods Co., Ltd. (Surapon Nichirei), and Thai I-Mei.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the 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 order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), 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, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), 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 order. 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 order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS 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 (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and, 8) 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 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 order are currently classified under the following HTSUS 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 HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

¹ This figure does not include those companies for which the Department is rescinding the administrative review.

² "Tails" in this context means the tail fan, which includes the telson and the uropods.

Period of Review

The POR is August 4, 2004, through January 31, 2006.

Partial Rescission of Review

Eight of the producers/exporters that responded to the Department's Q&V questionnaire stated that they had no shipments/entries of subject merchandise into the United States during the POR. These companies are: Bangkok Dehydrated Marine Product Co., Ltd. (Bangkok Dehydrated Marine Product), NR Instant Produce,³ Siam Intersea Co., Ltd. (Siam Intersea), Siam Ocean, Surapon Nichirei, Tep Kinsho, Thai Agri, and Thai World Imports and Exports.⁴ However, based on information obtained from U.S. Customs and Border Protection (CBP), it appeared that these companies did, in fact, have shipments or entries of subject merchandise into the United States during the POR. As a result, we requested that seven of these companies explain the entries in question. We did not request information from Bangkok Dehydrated Marine Product because, based on CBP information, we found that the merchandise (*i.e.*, dried shrimp) was outside the scope of the order.

In response to the Department's solicitation and/or based on information from CBP, we continue to find that the entries at issue were not reportable transactions for four of the eight companies because they were either: 1) non-subject merchandise (*i.e.*, dried shrimp); 2) a non-paid sample; or 3) reported by another company in its Q&V response based on knowledge of destination. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are rescinding our review with respect to Bangkok Dehydrated Marine Product, Siam Ocean, Tep Kinsho, and Thai Agri. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65083 (Nov. 7, 2006).

One of the remaining exporters/producers, Siam Intersea, provided additional information to the Department indicating that it did, in fact, have a reportable transaction during the POR. We are not rescinding the administrative review with respect to this company and are assigning to it

the weighted-average margin calculated for the companies selected for individual review because we find: 1) the discrepancy between the Q&V questionnaire response and the CBP data appeared to be an inadvertent oversight; 2) the quantity of the exports in question was so small that it would not have impacted our selection of respondents; and 3) the company has been responsive to our requests for information.

In addition, the remaining two exporters/producers, NR Instant Produce and Surapon Nichirei, stated that they did not report the entries in question because they claimed that the entries were of non-subject merchandise. We preliminarily found that, because these companies' merchandise entered into the United States as subject merchandise and there was insufficient evidence on the record to conclude otherwise, the merchandise in question was included within the scope of the order. *See Preliminary Results*, 72 FR at 10672. Regarding NR Instant Produce, because we have received no further information demonstrating that the merchandise exported by this company is not subject to the order, we are continuing to assign it the weighted-average margin calculated for the companies selected for individual review. Regarding Surapon Nichirei, however, we have now determined that this merchandise constitutes a prepared meal based on information provided by Surapon Nichirei and is, therefore, excluded from the scope of the order. Consequently, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice we are rescinding the review with respect to Surapon Nichirei. For further information, see the Issues and Decision Memorandum (Decision Memo) accompanying this notice at Comment 4.

Finally, the remaining exporter/producer, Thai World Imports and Exports, failed to respond to the Department's request for additional information and, thus, we find that it failed to act to the best of its ability. Therefore, we are not rescinding the administrative review with respect to Thai World Imports and Exports. For further information, see the "Facts Available" section of this notice.

Facts Available

In the preliminary results, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for the following producer/exporters: Anglo-

Siam Seafoods, Fortune Frozen Foods, Gallant Ocean, Li-Thai Frozen Foods Co., Ltd. (Li-Thai), Queen Marine Food Co., Ltd. (Queen Marine Foods), Smile Heart Foods, and Thai World Imports and Exports. *See Preliminary Results*, 72 FR at 10673-74.

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

In April 2006, the Department requested that all companies subject to review respond to the Department's Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 28, 2006. Because numerous companies did not respond to this initial request for information, in May 2006 the Department issued letters to these companies affording them a second opportunity to submit a response to the Department's Q&V questionnaire. However, the following companies failed to respond to the Department's second request for Q&V data: Anglo-Siam Seafoods, Gallant Ocean, Li-Thai, Queen Marine Foods, and Smile Heart Foods. On January 31, 2007, the Department placed documentation on the record confirming delivery of the questionnaires to each of these companies. *See the Memorandum to the File from Brianne Riker entitled, "Placing Delivery Information on the Record of the 2004-2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand,"* dated January 31, 2007. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department's questionnaire, the Department preliminarily found that the use of total facts available was warranted.

Moreover, in May 2006, Thai World Imports and Exports claimed that it made no shipments of subject merchandise to the United States during the POR. Because we were unable to confirm the accuracy of this claim with CBP, we requested further information/clarification from this producer/exporter. However, Thai World Imports

³ We note that the response from this company indicated that its name is NR Instant Produce Co., Ltd.

⁴ We note that the responses from these companies indicated that their names are Siam Ocean Frozen Foods Co., Ltd., Tep Kinsho Foods Co., Ltd., Thai Agri Foods Co., Ltd., and Thai World Imports and Exports Co., Ltd., respectively.

and Exports failed to provide the requested information. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because Thai World Import and Export did not respond to the Department's request for additional information, the Department also preliminarily found that the use of total facts available was warranted for it.

By failing to respond to the Department's requests, the above-mentioned companies withheld requested information and significantly impeded the proceeding. Therefore, as in the preliminary results, the Department finds that the use of total facts available for Anglo-Siam Seafoods, Gallant Ocean, Li-Thai, Queen Marine Foods, Smile Heart Foods, and Thai World Imports and Exports is appropriate pursuant to sections 776(a)(2)(A) and (C) of the Act. See *Preliminary Results*, 72 FR at 10673-74. We note that, while Anglo-Siam Seafoods and Gallant Ocean attempted to provide Q&V questionnaire responses after the preliminary results, we did not accept this information because it was untimely, pursuant to 19 CFR 351.302(d)(1)(i). Therefore, we find that these companies were not responsive to the Department's requests for information. For further discussion regarding Gallant Ocean, see the Decision Memo at Comment 8.

Finally, we are reversing our preliminary decision to base the margin for Fortune Frozen Foods on total facts available. In the preliminary results, we assigned Fortune Frozen Foods a margin based on total facts available because the company failed to properly file its Q&V questionnaire response. On March 2, 2007, Fortune Frozen Foods contacted the Department regarding its rejected Q&V submission. Subsequently, on March 12, 2007, Fortune Frozen Foods submitted a Q&V questionnaire response, as well as a request that the Department consider it for purposes of the final results. In this submission, Fortune Frozen Foods explained to the Department that it re-filed its original Q&V questionnaire response before the deadline given by the Department; however, a company employee inadvertently sent the document via Thai first-class mail rather than an international courier service. Because: 1) Fortune Frozen Foods had previously submitted a timely Q&V questionnaire response that was rejected by the Department due to procedural deficiencies; 2) we find Fortune Frozen Foods' explanation plausible; and 3) we now have a copy of Fortune Frozen Foods' Q&V questionnaire response on the record of this administrative review, we are accepting Fortune Frozen Foods

Q&V questionnaire response. Therefore, we will not base the margin for Fortune Frozen Foods on total facts available. Rather, we have now assigned Fortune Frozen Foods the weighted-average margin calculated for the companies selected for individual review. For further information, see the Decision Memo at Comment 7.

Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (Sept. 13, 2005); see also, *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (Aug. 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). See also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We find that Anglo-Siam Seafoods, Gallant Ocean, Li-Thai, Queen Marine Foods, Smile Heart Foods, and Thai World Imports and Exports did not act to the best of their ability in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Therefore, an adverse inference is warranted in selecting facts otherwise available. See *Nippon*, 337 F.3d at 1382-83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: (1) the petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is

sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792, 55796 (Aug. 30, 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (Feb. 23, 1998).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned a rate of 57.64 percent, which was the highest rate alleged in the petition, as adjusted at the initiation of the less-than-fair-value (LTFV) investigation, to Anglo-Siam Seafoods, Gallant Ocean, Li-Thai, Queen Marine Foods, Smile Heart Foods, and Thai World Imports and Exports. The Department finds that this rate is sufficiently high as to effectuate the purpose of the AFA rule (i.e., we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). We continue to find that the information upon which this margin is based has probative value and thus satisfies the requirements of section 776(c) of the Act. See *Preliminary Results*, 72 FR at 10673-74. For further information regarding corroboration of the AFA rate, see the Decision Memo at Comment 2.

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether Good Luck Product and Pakfood made home market sales of the foreign like product during the POR at prices below their costs of production (COPs) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. See sections 773(b)(2)(B) - (D) of the Act.

Therefore, for purposes of these final results, we found that Good Luck

Product and Pakfood made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value (NV) pursuant to section 773(b)(1) of the Act.

Regarding Thai I–Mei, as discussed in the preliminary results, we based NV on constructed value in accordance with section 773(a)(4) of the Act because there was no viable home or third country market. Therefore, we did not perform the cost test for this company.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo. Because the margin calculations for Good Luck Product and Pakfood have not changed from the preliminary results, the preliminary calculations placed on the record of this administrative review are adopted as the final margin calculations.

Final Results of Review

We determine that the following weighted-average percentage margins exist for the period August 4, 2004, through January 31, 2006:

Manufacturer/Exporter	Percent Margin
Good Luck Product Co., Ltd.	10.75
Pakfood Public Company Limited/Asia Pacific (Thailand) Company Limited/Chaopraya Cold Storage Company Limited/Okeanos Company Limited/Takzin Samut Company Limited	4.29
Thai I–Mei Frozen Foods Co., Ltd.	2.58

Review–Specific Average Rate Applicable to the Following Companies:⁵

Manufacturer/Exporter	Percent Margin
Crystal Frozen Foods Co., Ltd.4.31.	
Far East Cold Storage Co., Ltd.	4.31
Fortune Frozen Foods (Thailand) Co., Ltd.	4.31
Inter–Oceanic Resources Co., Ltd.	4.31
Kitchens of the Oceans (Thailand), Ltd.	4.31
Lee Heng Seafood Co., Ltd.	4.31
Narong Seafood Co., Ltd.	4.31
NR Instant Produce Co., Ltd.	4.31
Pacific Queen Co., Ltd.	4.31
Piti Seafood Co., Ltd.	4.31
S&D Marine Products Co., Ltd. ..	4.31
Siam Intersea Co., Ltd.	4.31
Siamchai International Food Co., Ltd.	4.31
SMP Food Product Co., Ltd.	4.31
Suratthani Marine Products Co., Ltd.	4.31

AFA Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
Anglo–Siam Seafoods Co., Ltd.	57.64
Gallant Ocean (Thailand) Co., Ltd.	57.64
Li–Thai Frozen Foods Co., Ltd.	57.64
Queen Marine Food Co., Ltd.	57.64
Smile Heart Foods	57.64
Thai World Imports and Exports Co., Ltd.	57.64

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.212(b)(1), for certain of Pakfood’s U.S. sales and all of Thai I–Mei’s U.S. sales, because these companies reported the entered value, we have calculated importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which

⁵ This rate is based on the weighted average of the margins calculated for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on AFA.

entered value was reported. For certain of Pakfood’s U.S. sales without reported entered values and for all Good Luck Product’s sales, we have calculated importer–specific per–unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer–specific *ad valorem* ratios based on the estimated entered value.

For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent).

The Department clarified its “automatic assessment” regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. This clarification will also apply to POR entries of subject merchandise produced by companies for which we are rescinding the review based on certifications of no shipments, because these companies certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. In such instances, we will instruct CBP to liquidate unreviewed entries at the “All Others” rate established in the LTFV investigation if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of shrimp from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50

percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, 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 merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.95 percent, the "All Others" rate established in the LTFV investigation. These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only 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 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 of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix – Issues in Decision Memorandum

General Issues

1. Offsets for Non-Dumped Sales
2. Corroboration of the Adverse Facts Available (AFA) Rate
3. The Placement of Species Within the Matching Hierarchy
4. Whether Entries Made by NR Instant Produce Co., Ltd. (NR Instant Produce) and Surapon Nicherei Foods Co., Ltd.

(Surapon Nicherei) Are Within the Scope of the Order

Company-Specific Issues

5. Final Rate Assigned to Gallant Ocean Co., Ltd. (Gallant Ocean)
 6. Home Market Sales Outside the Ordinary Course of Trade for Good Luck Product Co., Ltd. (Good Luck Product)
 7. Classification of Certain of Good Luck Product's Selling Expenses as Direct
 8. Acceptance of Quantity and Value (Q&V) Data Submitted by Fortune Frozen Foods (Thailand) Co., Ltd. (Fortune Frozen Foods)
 9. Verification Changes for Pakfood Public Company, Asia Pacific (Thailand) Company Limited, Takzin Samut Company Limited, Okeanos Company Limited, Chaopraya Cold Storage, and Singkara Company Limited (collectively "Pakfood")
 10. Application of the Multinational Corporation (MNC) Provision to Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei)
 11. Date-of-Sale Methodology for Thai I-Mei
 12. Calculation of Warehousing Expenses for Thai I-Mei
 13. Constructed Export Price (CEP) Offset for Thai I-Mei
 14. Calculation of CEP Profit for Thai I-Mei
 15. Source of General and Administrative (G&A) Expense Data for Thai I-Mei
 16. The G&A and Interest Expense Ratio Denominator for Thai I-Mei
 17. Calculation of Constructed Value (CV) Profit for Thai I-Mei
 18. Calculation of the Assessment Rate for Thai I-Mei
- [FR Doc. E7-18010 Filed 9-11-07; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A-331-802]

Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Ecuador. This review covers 23 producers/exporters of the subject merchandise to the United States. The period of review (POR) is August 4, 2004, through January 31, 2006.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT:

David Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-4136 and (202) 482-3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 23 producers/exporters. The respondents selected for individual review are OceanInvest, S.A. (OceanInvest) and Promarisco, S.A. (Promarisco). The respondents not selected for individual review are listed in the "Final Results of Review" section of this notice.

On March 9, 2007, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from Ecuador. See *Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10658 (March 9, 2007) (*Preliminary Results*).

We issued a supplemental questionnaire to Promarisco on March 9, 2007, in order to clarify certain reported data in the sales listings. We received a response to this supplemental questionnaire on March 19, 2007.

We invited parties to comment on our preliminary results of review, as well as on the additional information noted above. In April and May 2007, we received case and rebuttal briefs from the petitioner (*i.e.*, the Ad Hoc Shrimp Trade Action Committee) and the respondents (*i.e.*, Promarisco and OceanInvest).

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the 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,¹ 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 order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), 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, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), 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 order. 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 order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS 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 (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) 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 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 order are currently classified under the following HTSUS 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 HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is August 4, 2004, through January 31, 2006.

Application of Facts Available

In the *Preliminary Results*, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for the following producer/exporters: Doblertel, S.A. (Doblertel) and Sociedad Atlantico Pacifico, S.A. (Sociedad Atlantico Pacifico). See *Preliminary Results*, 72 FR at 10700-01.

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

Doblertel and Sociedad Atlantico Pacifico claimed that they made no shipments of subject merchandise to the United States during the POR. However, because we were unable to confirm the accuracy of these companies' claims with Customs and Border Protection (CBP), we requested further information/clarification from them. Doblertel and Sociedad Atlantico Pacifico failed to provide the requested

information/clarification. By doing so, these companies withheld requested information and significantly impeded the proceeding. Therefore, as in the *Preliminary Results*, the Department finds that the use of total facts available for Doblertel and Sociedad Atlantico Pacifico is appropriate pursuant to sections 776(a)(2)(A) and (C) of the Act. See *Preliminary Results*, 72 FR at 10700-01.

Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (Sept. 13, 2005); see also *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (Aug. 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994) (SAA). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We find that Doblertel and Sociedad Atlantico Pacifico did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Therefore, an adverse inference is warranted in selecting facts otherwise available. See *Nippon*, 337 F.3d at 1382-83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the

¹ "Tails" in this context means the tail fan, which includes the telson and the uropods.

statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned the highest transaction-specific rate calculated for a respondent in this review. As discussed in detail in the *Preliminary Results*, 72 FR at 10701, and the Memorandum to the File entitled "Procedures Conducted to Corroborate Data Contained in Petition for Assignment of Appropriate Adverse Facts Available Rate," dated February 28, 2007, the Department preliminarily found that the highest transaction-specific rate of 48.61 percent was sufficiently high as to effectuate the purpose of the AFA rule (*i.e.*, we found that this rate was high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act), and that the information upon which this margin is based has probative value and thus satisfies the requirements of section 776(c) of the Act.

For the final results, we have applied the same AFA rate selection methodology for the same reasons as those articulated in the *Preliminary Results*. However, as a result of changes made to the respondents' margin calculations since the *Preliminary Results*, the highest transaction-specific rate calculated for a respondent in this review has changed. For the final results, the highest transaction-specific rate calculated is 35.00 percent. We find that this rate is sufficiently adverse so as to induce cooperation in future segments of this proceeding, in accordance with section 776(b) of the Act, and that the information upon which this margin is based also has probative value and thus satisfies the requirements of section 776(c) of the Act.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether OceanInvest and Promarisco made third country sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the

Preliminary Results, except as discussed in the decision memorandum accompanying this notice (the Decision Memo).

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. See Sections 773(b)(2)(B) - (D) of the Act.

Therefore, for purposes of these final results, we find that OceanInvest and Promarisco made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the accompanying Issues and Decision Memorandum (the Decision Memo), which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period August 4, 2004, through January 31, 2006:

Manufacturer/Producer/Exporter	Margin Percentage
OceanInvest, S.A.	3.69

Manufacturer/Producer/Exporter	Margin Percentage
Promarisco, S.A.	0.39 (<i>de minimis</i>)

Review-Specific Average Rate Applicable to the Following Companies:²

Manufacturer/Exporter	Margin Percentage
Agrol S.A.	3.69
Camarones (Camarones Del Mar COBUS S.A.)	3.69
Comercializadora del Mar COMAR Cia. Ltda.	3.69
Empacadora y Exportadora Calvi Cia. Ltda.	3.69
Emprede S.A.	3.69
Exportadora del Oceano Oceanexa C. A.	3.69
Fortumar Ecuador S.A.	3.69
Gambas del Pacifico	3.69
Hectorosa S.A.	3.69
Inepexa S.A.	3.69
Jorge Luis Benitez Lopez	3.69
Luis Loaiza Alvarez	3.69
Mardex Cia. Ltda.	3.69
Marines C.A.	3.69
Pacfish, S.A.	3.69
PCC Congelados & Frescos SA	3.69
Pescazul S.A.	3.69
Productos Cultivados del Mar "Proculmar" Cia. Ltda.	3.69
Promarosa S.A.	3.69

AFA Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
Doblertel S.A.	35.00
Sociedad Atlantico Pacifico, S.A.	35.00

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue liquidation and assessment instructions to CBP 15 days after the date of publication of these final results of review.

Pursuant to 19 CFR 351.212(b)(1), for OceanInvest, because this company reported the entered value for some of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which

² This rate is based on the weighted average of the margins calculated for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on AFA. As the final results rate for Promarisco is *de minimis*, the rate applicable to these companies is the final results rate calculated for OceanInvest.

entered value was reported. For OceanInvest's U.S. sales reported without entered values, we calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific ad valorem ratios based on the estimated entered value.

For Promarisco, because it reported the entered value of all of its U.S. sales, we have calculated the importer-specific ad valorem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. As discussed in the Memorandum to the File dated September 5, 2007, entitled "Supplementary Discussion of Promarisco Issues in Final Results," we have calculated a single importer-specific assessment rate for Promarisco, consistent with our practice in *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and Singapore: Final Results of the Antidumping Administrative Reviews, Rescission of Administrative Review in part, and Determination Not to Revoke Order in Part*, 68 FR 35623 (June 16, 2003), and accompanying Issues and Decision Memorandum at Comment 9B; and *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 69 FR 75921 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 13.

For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent).

The Department clarified its "automatic assessment" regulation on

May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Discontinuation of Cash Deposit Requirements

Pursuant to the *Implementation of the Findings of the WTO Panel in United States – Antidumping Measure on Shrimp from Ecuador: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador*, 72 FR 48257 (August 23, 2007), effective August 15, 2007, we have revoked the antidumping duty order on frozen warmwater shrimp from Ecuador. Accordingly, we will instruct CBP to discontinue collection of cash deposits of antidumping duties on entries of the subject merchandise.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only 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 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 final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221.

Dated: September 5, 2007.

David M. Spooner,
Assistant Secretary for Import Administration.

Appendix – Issues in Decision Memorandum

General Issues

1. "Zeroing" Methodology in Administrative Reviews

Company-Specific Issues

2. Treatment of Sales and Certain Costs of Promarisco Geviche Products
3. Third-Country Market Selection for Promarisco
4. Treatment of Certain Promarisco U.S. Sales
5. Allocation of Certain Promarisco Processing Costs
6. OceanInvest's Reported COP Methodology
7. CV Profit Rates for OceanInvest's Value-Added and Non-Value-Added Products
8. Treatment of OceanInvest's Commission Expenses

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-822]

Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on helical spring lock washers ("HSLWs") from the People's Republic of China ("PRC") covering the period October 1, 2005, through September 30, 2006. We have preliminarily determined that sales have not been made below normal value ("NV") by Hangzhou Spring Washer Co., Ltd. ("HSW") (also known as Zhejiang Wanxin Group Co., Ltd.). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review ("POR").

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to

section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“Act”).

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Charles Riggle at, 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) 482–2336 or (202) 482–0650, respectively.

Background

On October 19, 1993, the Department published the antidumping duty order on certain HSLWs from the PRC, as amended on November 23, 1993. See *Antidumping Duty Order: Certain Helical Spring Lock Washers From the People’s Republic of China*, 58 FR 53914 (October 19, 1993), and *Amended Final Determination and Amended Antidumping Duty Order: Certain Helical Spring Lock Washers From the People’s Republic of China*, 58 FR 61859 (November 23, 1993). On October 2, 2006, the Department published a notice of opportunity to request an administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 57920 (October 2, 2006). In accordance with 19 CFR 351.213(b)(1) and (2), the following requests were made: (1) On October 25, 2006, HSW, a producer and exporter of subject merchandise, requested that the Department conduct an administrative review of HSW; (2) on October 30, 2006, Shakeproof Assembly Components Division of Illinois Tool Works, Inc. (“Shakeproof” or “Petitioner”), a domestic interested party, requested that the Department conduct an administrative review of HSW.

On November 27, 2006, the Department published the initiation of the administrative review of the antidumping duty order on HSLWs from the PRC covering the period October 1, 2005, through September 30, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 68535 (November 27, 2006). The Department issued an antidumping duty questionnaire to HSW on December 26, 2006.

The Department informed interested parties that surrogate value information, submitted by April 19, 2007, would be considered for the preliminary results and requested parties provide surrogate country selection comments by April 7, 2007. See Letter from Charles Riggle, Program Manager, AD/CVD Operations,

Office 8, to Interested Parties, regarding surrogate factors of production (“FOP”) values (February 9, 2007); and Letter from Charles Riggle, Program Manager, AD/CVD Operations, Office 8, to Interested Parties, regarding surrogate country selection (February 9, 2007). On April 19, 2007, HSW and Petitioner provided comments on publicly available information to value the FOP. Neither of the interested parties provided comments on the selection of a surrogate country. On May 25 and July 24, 2007, HSW provided additional comments on publicly available information to value the FOP.

On June 6, 2007, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until September 4, 2007. See *Certain Helical Spring Lock Washers from the People’s Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 31278 (June 6, 2007).

Verification of Responses

As provided in section 782(i) of the Act, we verified information provided by HSW. The Department conducted the sales and FOP verification using standard verification procedures at HSW’s facilities in Hangzhou, Zhejiang Province from June 11 through 15, 2007. Our verification results are outlined in the Memorandum to the File from Marin Weaver and Jennifer Moats, International Trade Compliance Analysts, Re: Verification of the Sales and Factors Response of Hangzhou Spring Washer Co., Ltd. in the Antidumping Duty Review of Certain Helical Spring Lock Washers from the People’s Republic of China (August 28, 2007) (“Verification Report”). Any changes made as a result of verification have been identified in our Memorandum to the File from Marin Weaver, International Trade Compliance Analyst, Re: Calculation of Preliminary Margin for Hangzhou Spring Washer Plant, also known as Zhejiang Wanxin Group Co., Ltd. (September 4, 2007) (“Calculation Memo”).

Period of Review

The POR is October 1, 2005, through September 30, 2006.

Scope of the Order

The products covered by the order are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness

between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the *Harmonized Tariff Schedule of the United States* (“HTSUS”). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Non-Market Economy Country Status

HSW did not contest the Department’s treatment of the PRC as a non-market economy (“NME”), and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews and continues to do so in this case. See, e.g., *Honey from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 29303 (May 22, 2006) (“Sawblades”). No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C)(i) of the Act.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer’s FOP, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOP, the Department shall use, to the extent possible, the prices or costs of the FOP in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines and Egypt are countries comparable to the PRC in terms of economic development. See Memorandum from Ron Lorentzen Director, Office of Policy, to Wendy Frankel, Director, AD/CVD

Enforcement, Office 8, Re: Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China; Request for a List of Surrogate Countries (December 21, 2006) ("Surrogate Country Memorandum"). Customarily, we select an appropriate surrogate country from the Surrogate Country Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. See Memorandum to Wendy Frankel, Director, AD/CVD Operations, Office 8, from Marin Weaver, International Trade Compliance Analyst, Re: Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China: Selection of a Surrogate Country (September 4, 2007) ("Surrogate Country Selection Memorandum").

The Department used India as the primary surrogate country and, accordingly, has calculated NV using Indian prices to value the PRC producer's FOP, when available and appropriate. See Surrogate Country Selection Memorandum, and Memorandum to Wendy Frankel from Marin Weaver, International Trade Compliance Analyst, Re: Preliminary Results of the 2005–2006 Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China: Factors-of-Production Valuation for Preliminary Results ("FOP Memo") (September 4, 2007). We have obtained and relied upon publicly available information wherever possible. The sources of the surrogate factor values are discussed under the "Normal Value" section, below, and in the FOP Memo.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOP within 20 days after the date of publication of the preliminary results of review.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's standard policy to assign all exporters of merchandise subject to review in an NME country a single rate unless an exporter can demonstrate an absence of government control, with respect to exports. To establish whether

an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*). Evidence supporting, though not requiring, a finding of absence of *de jure* government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Absence of *de facto* government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or the financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589.

In May 1999, HSW was sold to five individuals and became a limited liability company. HSW has placed on the record documents to demonstrate the absence of *de jure* control and the Department took further documentation at verification. These documents included its list of shareholders, business license, Company Law, and Public Sales Agreement. Other than limiting HSW to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of *de jure* control. See, e.g. *Sawblades*, 71 FR 29303, and accompanying Issues and Decision Memorandum at Comment 9. We have no information in this segment

of the proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for HSW.

With regard to *de facto* control, HSW reported the following: (1) It sets prices to the United States through negotiations with customers and these prices are not subject to review by any government organization; (2) the PRC government does not coordinate the export activities of HSW; (3) HSW's general manager and deputy general manager have the authority to contractually bind the company to sell subject merchandise; (4) the board of directors has appointed the general manager, and the other managers are appointed either by the board of directors or the general manager; (5) there is no restriction on its use of export revenues; (6) HSW's management decides how to dispose of the profits. Additionally, HSW's questionnaire responses do not suggest that pricing is coordinated among exporters nor does it reveal other information indicating government control of export activities. Furthermore, we did not find any evidence at verification indicating government control of export activities or that pricing is coordinated among exporters. See Verification Report. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over HSW's export functions.

In the instant administrative review, we find an absence of government control, both in law and in fact, with respect to HSW's export activities according to the criteria identified in *Sparklers* and an absence of government control with respect to the additional criteria identified in *Silicon Carbide*. Therefore, we have assigned HSW a separate rate.

Date of Sale

19 CFR 351.401(i) states that, in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the normal course of business. However, the Department may use a date other than the date of invoice if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001).

After examining the questionnaire responses and the sales documentation

that HSW placed on the record, we preliminarily determine that the invoice date is the most appropriate date of sale, except where the shipment date precedes the invoice date for export price ("EP") sales. We made this determination based on record evidence which demonstrates that HSW's invoices establish the material terms of sale to the extent required by our regulations. We also determine that for EP sales, the terms of sale cannot be established after the date of shipment. Accordingly, where the shipment date precedes the invoice date, the Department considers the shipping date to be the date of sale. See *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695 (April 17, 2006) (unchanged in the final determination).

Normal Value Comparisons

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on the FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies. Therefore, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). To determine whether POR sales of HSLWs to the United States by HSW were made at less than NV, we compared EP to NV, as described below.

Export Price

Because HSW sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) and use of a constructed export price methodology is not otherwise indicated, we have used EP in accordance with section 772(a) of the Act.

We calculated EP based on the free on board or delivered price, as appropriate, to unaffiliated purchasers for HSW. From this price, we deducted amounts for domestic movement expenses (*i.e.*, PRC inland freight), brokerage and

handling, and, where applicable, commissions, pursuant to section 772(c)(2)(A) of the Act. See Calculation Memo.

To value truck freight used in the inland freight calculation, we used the freight rates published by Indian Freight Exchange, available at <http://www.infreight.com>. The truck freight rates are from January to October 2005; therefore, we made adjustments for inflation using the Indian Wholesale Price Index as published in the International Financial Statistics of the International Monetary Fund. See FOP Memo.

The Department used two sources to calculate a surrogate value for domestic brokerage expenses: (1) Data from the January 9, 2006 public version of the Section C questionnaire response from Kejirwal Paper Ltd. ("Kejirwal");¹ and (2) data from Agro Dutch Industries Ltd. for the period of review February 1, 2004, through January 31, 2005 (see *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (unchanged in final results)). The Department adjusted these data for inflation and used a simple average of the data as its brokerage and handling surrogate value. See FOP Memo.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP reported by HSW for the POR. In selecting the best available information for valuing FOP in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, publicly available surrogate values which are average non-export values, most contemporaneous with the POR, product-specific, and tax-exclusive. See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004) (unchanged in the final determination). Where contemporaneous data were not available for the POR, we have inflated the surrogate values in the manner

¹Kejirwal was a respondent in the certain lined paper products from India investigation for which the period of investigation was July 1, 2004, to June 30, 2005. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (unchanged in final determination).

described in the FOP Memo. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian surrogate values. As appropriate, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-1408 (Fed. Cir. 1997). For these preliminary results we have:

- Used data from the *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and available from *World Trade Atlas* (disregarding import prices that we have reason to believe or suspect may be subsidized or are from an NME country) and *Chemical Weekly*, an Indian publication containing domestic (*i.e.*, Indian) prices for chemicals, to calculate surrogate values for HSW's material inputs and packing inputs;

- For all types of labor, consistent with 19 CFR 351.408(c)(3), used the PRC regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries as reported on Import Administration's home page. See "Expected Wages of Selected NME Countries" (revised January 2007), available at <http://ia.ita.doc.gov/wages/index.html>;

- Valued electricity using the 2000 electricity price rates from *Key World Energy Statistics 2003*, published by the International Energy Agency, available at <http://www.eia.doe.gov/emeu/international/elecprti.html>;

- Valued water using data from the Maharashtra Industrial Development Corporation (<http://www.midcindia.org>) since it includes a wide range of industrial water tariffs;

- Determined the best available information for valuing truck freight to be from <http://www.infreight.com>, which is described in the "Export Price" section, above;

- Valued the cost of transporting materials by rail using the rates charged by Indian Railways, available at <http://www.indianrailways.gov.in>;

- Determined the best available information for valuing barge freight is Inland Waterways Authority of India as submitted by HSW on June 25, 2001, in

the 1999–2000 administrative review of HSLWs from the PRC;

- Valued factory overhead, selling, general, and administrative expenses, and profit, using Suchi Fasteners Private Ltd.'s financial statements for the year ended March 31, 2005. This company produces nuts and washers, including spring lock washers, which are identical to HSW's product lines.

For a more detailed discussion of our choices of Indian surrogate values, see FOP Memo.

Currency Conversion

We converted all surrogate values denominated in rupees to U.S. dollars using the average daily exchange rate for the POR, which we calculated using the official daily exchange rates from the Department's Web site.²

Application of Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) Withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires

the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available ("AFA") information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2), 776(b) and 782(d) of the Act, the use of partial AFA is appropriate for the preliminary results for HSW.

1. Application of Facts Available in Part

HSW reported one packing configuration for each product code in its May 25, 2007, response at Exhibit 7. At verification, in reviewing the sales traces, we noticed that while HSW had reported only one packing configuration per product code, the packing lists showed that a substantial number of sales observations used packing configurations different from those reported for their particular product type. See Verification Report. At verification we asked company officials if they had identified and reported instances when specialized packing configurations were used to pack the subject merchandise shipped to the United States. Company officials stated that they had only reported one packing configuration per product. We examined HSW's questionnaire and supplemental questionnaire responses with regard to packing, and none of the narration provided indicated that the company used multiple packing configurations for its products.

Therefore, we find that the application of facts available to the packing usage rates of those sales whose packing configuration we did not verify is warranted. First, HSW withheld from the Department the correct information regarding the packing of its HSLWs. Second, HSW failed to provide information within the deadlines established. Specifically, in this case the deadline for new factual information was March 20, 2007. See 19 CFR 351.301(b)(2). Furthermore, while information for minor corrections is accepted at the start of verification, HSW was reminded in the verification outline issued on June 1, 2007, that verification is not intended to be an opportunity for submission of new

factual information.³ Third, because we discovered during the verification that multiple packing configurations were used, due to the statutory deadlines, it was not practicable to provide HSW the opportunity to remedy its incomplete reporting. Fourth, because HSW withheld packing configuration information related to its sales, we were unable to verify the packing usage rates for observations which used different packing configurations than the standard configurations reported by HSW. See Verification Report.

2. Use of Adverse Inferences

We also find it appropriate to apply an adverse inference of facts available, pursuant to section 776(b) of the Act, to the packing usage rates of sales whose packing configuration we did not examine in the course of verification. As discussed above, in its questionnaire responses HSW did not inform us that it used multiple packing configurations for its HSLWs. We discovered this at verification. Furthermore, upon discovery, we questioned HSW about its configurations and company officials stated that one or two customers request specialized packing. However, while reviewing the sales traces, we found instances where sales to customers other than those named by company officials also used packing configurations which varied from the reported configuration. See Verification Report. Of the sampling of sales observations we examined, we found that a large percentage (measured by quantity) had used a packing configuration different from the reported standard configurations. See Verification Report. Therefore, as the use of different packing configurations was common company officials should have been aware of and should have notified the Department of these different configurations. At verification, company officials said that they felt it would have been too difficult to report the specialized packing configurations. See Verification Report. This statement shows that company officials were well aware that multiple packing configurations were used and chose not to inform the Department of this fact.

By not informing us in its questionnaire responses or in the minor corrections at verification that it used multiple packing configurations based on customer requests, HSW has not cooperated to the best of its ability. Therefore, an adverse inference is warranted under section 776(b) of the

³ As discussed below, the packing configuration information in question was not presented to us by HSW at the start of verification or any other time. Rather, it was discovered during the course of verification.

² See <http://ia.ita.doc.gov/exchange/india.txt>.

Act. See, e.g., *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710, 30724–30728, at Comment 3 (June 8, 1999); see also *Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002), and accompanying Issues and Decision Memorandum at Comment 24. Because HSW failed to cooperate to the best of its ability, we find it necessary to use an AFA, in part, with regard to the packing usage rates for the sales which we did not verify.

Specifically, the verification report contains a chart for those sales that we verified that used different packing configurations from the reported standard configuration, and lists the percentage difference between the actual configuration and the reported packing configuration. See Verification Report. We have taken a simple average of these percentage differences and used this to inflate the packing usage rates of all the sales we did not verify. See Calculation Memo. For those sales we verified that used different packing configurations than those used in the reported standard configuration, we have adjusted the packing rate by the actual percentage difference found. For those sales we verified which used the reported standard configuration, we made no adjustment to the reported packing usage rate.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Margin
Hangzhou Spring Washer Co. Ltd. (also known as Zhejiang Wanxin Group Co., Ltd.)	0.00

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. See 19 CFR 351.309(c)(ii). Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held 42 days after the date of publication of this notice. See 19 CFR 351.310(d). Rebuttal

briefs, limited to issues raised in case briefs, should be filed no later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such written briefs or at the hearing, if held, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this administrative review. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting per-unit value or *ad valorem* rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For HSW, which has a separate rate, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis*, zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding (which were not reviewed in this segment of the proceeding), the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 70.71 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 preliminary results of review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 4, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-17989 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-851]

Certain Preserved Mushrooms From the People's Republic of China: Extension of Preliminary Results for Eleventh Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3936 and (202) 482-5253, respectively.

SUPPLEMENTARY INFORMATION: On April 2, 2007, the Department published a notice of initiation of a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC, covering the period of review ("POR") February 1, 2006, to January 31, 2007, on Ayecue (Liaocheng) Foodstuff Co., Ltd. ("Ayecue"). See *Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 72 FR 15657 (April 2, 2007).

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the

Act”), and section 351.214(i)(1) of the Department’s regulations, the Department shall issue preliminary results in a new shipper review of an antidumping duty order within 180 days after the date on which the new shipper review was initiated. The Act and regulations further provide, however, that the Department may extend that 180-day period to 300 days if it determines that this review is extraordinarily complicated. See 19 CFR 351.214(i)(2) and 751 (a)(2)(B)(iv) of the Act.

The Department finds that this review is extraordinarily complicated and that it is not practicable to complete this new shipper review within the foregoing time period. Specifically, the Department must issue supplemental questionnaires to obtain additional information about (1) Ayecue’s complex methodology for allocating consumption rates of factors of production, and (2) the *bona fides* of its U.S. sale. In addition, the Department needs additional time to conduct verification of the submitted information. Accordingly, the Department finds that additional time is needed in order to complete these preliminary results.

Section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2) allow the Department to extend the deadline for the preliminary results to a maximum of 300 days from the date of initiation of the new shipper review. For the reasons noted above, we are extending the deadline for the completion of the preliminary results of this new shipper review to 300 days, *i.e.*, from September 24, 2007, until no later than January 22, 2008.¹ The deadline for the final results of this new shipper review continues to be 90 days after the publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act, and section 19 CFR 351.214(i)(2).

Dated: September 7, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-17999 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-810]

Stainless Steel Bar from India: Notice of Extension of Time Limit for the Final Results of the 2006 New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Devta Ohri or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482-3853 and (202) 482-0182, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) of the Department of Commerce’s (Department) regulations require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and the final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department determines that the issues are extraordinarily complicated, 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2) allow the Department to extend the deadline for the final results to up to 150 days after the date on which the preliminary results were issued.

Background

On September 26, 2006, the Department published a notice of initiation of a new shipper review of the antidumping duty order on stainless steel bar from India for Ambica Steels Limited (Ambica), covering the period February 1, 2006, through July 31, 2006. See *Stainless Steel Bar from India: Notice of Initiation of Antidumping Duty New Shipper Review*, 71 FR 56105 (September 26, 2006). On July 17, 2007, the Department issued the preliminary results of review. The preliminary results were published on July 23, 2007. See *Stainless Steel Bar from India: Preliminary Results of Antidumping Duty New Shipper Review*, 72 FR 40113 (July 23, 2007). The final results for this review are currently due no later than October 15, 2007.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the final results of a new shipper review if it determines that the case is extraordinarily complicated. The Department issued a supplemental questionnaire (dealing with sales and cost issues) to Ambica following the preliminary results, and the Department needs additional time to analyze Ambica’s response. In addition, the Department is planning to conduct a sales and cost verification of Ambica in September. As a result, the Department has determined that this review is extraordinarily complicated, and the final results of this new shipper review cannot be completed within the statutory time limit of 90 days. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the completion of the final results by 60 days, until no later than December 14, 2007.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: September 5, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-17992 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-808]

Stainless Steel Wire Rods from India: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind Antidumping Duty Administrative Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel wire rods from India in response to a request from an interested party. The review covers one manufacturer/exporter, Mukand Limited. The period of review is December 1, 2005, through November 30, 2006. We have preliminarily determined that Mukand Limited made sales at less than normal value.

The Department of Commerce intends to rescind the administrative review

¹ January 21, 2008, is Martin Luther King Jr. Day, which is a federal holiday. Therefore, the deadline for completing the preliminary results of this new shipper review shall be the next business day, January 22, 2008.

with respect to Sunflag Iron & Steel Co., Ltd. See "Intent to Rescind Administrative Review" section below. We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument a statement of each issue and a brief summary of the argument.

EFFECTIVE DATE: September 12, 2007.

FOR FURTHER INFORMATION CONTACT: George Callen, AD/CVD Enforcement, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-0180.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1993, the Department of Commerce (the Department) published the antidumping duty order on certain stainless steel wire rods (wire rods) from India. See *Antidumping Duty Order: Certain Stainless Steel Wire Rods from India*, 58 FR 63335 (December 1, 1993). On December 1, 2006, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 69543 (December 1, 2006).

On December 29, 2006, in accordance with 19 CFR 351.213(b)(2), Mukand Limited (Mukand), a producer and exporter, requested an administrative review under section 751(a) of the Tariff Act of 1930, as amended (the Act), of the antidumping duty order on wire rods from India. On December 29, 2006, the Department of Commerce received a request to conduct an administrative review of the antidumping duty order on stainless steel wire rods from India from Sunflag Iron & Steel Co., Ltd. (Sunflag). On February 2, 2007, in accordance with 751(a) of the Act and 19 CFR 351.221(b)(1), we published in the **Federal Register** a notice of initiation of administrative review of this order. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007).

The period of review (POR) is December 1, 2005, through November 30, 2006. We are conducting this administrative review in accordance with section 751(a) of the Act.

Intent to Rescind Administrative Review

Sunflag also requested a new-shipper review, which we initiated on March 20, 2007. See *Stainless Steel Wire Rod from India: Notice of Initiation of Antidumping Duty New-Shipper Review*, 72 FR 13088 (March 20, 2007). Because we are proceeding with the new-shipper review and because the administrative review covers entries during the same period of time as the new-shipper review, we intend to rescind the administrative review pursuant to 19 CFR 351.214(j).

Scope of the Order

The merchandise under review is wire rods, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. Wire rods are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross section. The majority of wire rods sold in the United States are round in cross-section shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The wire rods subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive of whether or not the merchandise is covered by the review.

Comparison-Market Sales

In order to determine whether there was a sufficient volume of sales of wire rods in the comparison market to serve as a viable basis for calculating the normal value, we compared the volume of the respondent's home-market sales of the foreign like product to its volume of the U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Mukand's quantity of sales in the home market was greater than five percent of its sales to the U.S. market. Based on this comparison of the aggregate quantities of the comparison-market (i.e., India) and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of the foreign like product sold

by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Thus, we determined that Mukand's home market was viable during the POR. See section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value for the respondent on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the U.S.-price sales.

Export Price

We calculated export price in accordance with section 772(a) of the Act because Mukand sold the merchandise to the unaffiliated purchaser in the United States prior to importation. We based export price on the packed, delivered, duty unpaid price to the unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. No other adjustments were claimed.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the scope of the order which were produced and sold by Mukand in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to wire rods sold in the United States. We compared U.S. sales to sales made in the comparison market within the contemporaneous window period. Mukand had only one entry of subject merchandise during the POR and on January 29, 2007, Mukand sought permission to report only home-market sales it made during the period July 2005 through December 2005, which covers the three months preceding and two months after this entry. We agreed to this request. See letter from Laurie Parkhill to Mukand dated February 26, 2007.

Because there were no contemporaneous sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to Mukand's U.S. sale, we compared its U.S. sale to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, we defined identical and most similar foreign like products based on the physical characteristics reported by

Mukand in the following order of importance: grade, diameter, and type of final finishing operation. For more information, page 2 of memorandum entitled "Administrative Review of the Antidumping Duty Order on Stainless Steel Wire Rods from India - Preliminary Results Analysis Memorandum for Mukand" dated August 30, 2007 (*Prelim Memo*).

Cost of Production

In the most recently completed segment of this proceeding in which Mukand participated, we disregarded certain sales made by Mukand in the home market that failed the cost test and we excluded such sales from the calculation of normal value. See 69 FR 29923 (May 26, 2004). Therefore, consistent with Section 773 (b)(2)(A)(ii) of the Act we are conducting a cost-of-production investigation of Mukand's home-market sales.

On January 29, 2007, Mukand sought permission to report cost-of-production data for the prior POR (December 1, 2004 - November 30, 2005) because the U.S. sale at issue involved merchandise that entered the United States during the current POR but was produced and shipped to the United States during the prior period. We agreed to that request. See letter from Laurie Parkhill to Mukand dated March 9, 2007.

In accordance with section 773(b)(3) of the Act, we calculated the cost of production (COP) based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales and COP information provided by Mukand in its questionnaire responses, including its home-market and COP data bases. See Mukand's March 15, 2007, June 15, 2007, and July 30, 2007, responses and accompanying data bases. We relied on the COP data submitted by Mukand, except for the changes identified below:

1. Under section 773(f)(3) of the Act (i.e., the "Major Input Rule"), we increased Mukand's reported cost of direct materials based on the difference between its affiliated supplier's cost of grade 201 and 410 billets and the transfer prices charged to Mukand for such billets.

2. We increased Mukand's general and administrative expense ratio to include "exceptional" expenses recognized in Mukand's financial statements for fiscal year 2004-2005. See *Prelim Memo* at 2.

After calculating the COP and in accordance with section 773(b)(1) of the Act, we tested home-market sales of the foreign like product to determine if they were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. The home-market prices were exclusive of any applicable movement charges, billing adjustments, discounts, and indirect selling expenses. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Mukand's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of Mukand's sales of a given product were at prices less than the COP, we disregarded the below-cost sales of that product because we determined that the below-cost sales were made in substantial quantities within an extended period of time, pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these below-cost sales were made at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. See *Prelim Memo*. Consequently, we disregarded Mukand's below-cost sales and used the remaining sales as the basis for determining normal value, in accordance with 773(b)(1) of the Act.

Normal Value

We based normal value for Mukand on the prices of the foreign like products sold to its comparison-market customers. When applicable, we made adjustments for differences in packing and movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to export price, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses incurred on home-market sales from, and adding U.S. direct selling expenses to, normal value. In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on sales at the same level

of trade as the export price. See the "Level of Trade" section below.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined normal value based on sales in the home market at the same level of trade as the export-price sales. The normal value level of trade is based on the starting price of the sales in the home market or, when normal value is based on constructed value, the starting price of the sales from which we derive SG&A expenses and profit. For export price sales, the U.S. level of trade is based on the starting price of the sales to the U.S. market.

To determine whether normal value sales are at a different level of trade than the export-price sales, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison-market sales are at a different level of trade than the export-price sales and the difference affects price comparability, as manifested by a pattern of consistent price differences between comparison-market sales at the normal value level of trade and comparison-market sales at the level of trade of the export transaction, the Department makes a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In determining whether Mukand made sales at different levels of trade, we obtained information from Mukand regarding the marketing stages for the reported U.S. and home-market sales, including a description of the selling activities it performed for each channel of distribution. Generally, if the reported levels of trade are the same, the selling functions and activities of the seller at each level should be similar. Conversely, if a party reports that levels of trade are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In the home market, Mukand reported four levels of trade: sales to end-user via an agent, sales to end-users without an agent, sales to traders without an agent, and sales to traders with an agent. See Mukand's questionnaire response, dated March 15, 2007 (*Mukand Response*), at B-20. Mukand reported five channels of distribution: sales to traders or end-users, sales to distributors through a del credere agent

(similar to a consignment agent except that Mukand and agent finalize price with customer and Mukand ships directly to the customer), sales to end-users through consignment agents, sales through "stock yards" (i.e., warehouses) with an agent and sales through warehouses without an agent. See *Mukand Response* at A-7-8.

We examined the chain of distribution and the selling activities associated with sales reported by Mukand to its five channels of distribution in the home market, and where appropriate, to distinct customer categories within these channels. We found that for sales to traders or end-users, sales to distributors through a del credere agent, and sales to end-users through consignment agents (distribution channels 1, 2, and 3), Mukand provided similar selling activities with respect to sales process, freight services, and warehousing services and, therefore, sales to these three channels constituted one distinct level of trade. We found that for sales through warehouses with an agent and sales through warehouses without an agent (distribution channels 4 and 5) Mukand provided similar selling activities with respect to sales process, freight services, and warehousing services and, therefore, sales to these two channels constituted another, distinct level of trade. Based upon our overall analysis in the home market, we found that these two levels of trade constituted two different levels of trade.

Mukand reported one export-price sale through one channel of distribution. To the extent practicable, we compare normal value at the same level of trade as the sale to the United States. The export-price level of trade is similar to the first level of trade in the home market (channels 1, 2, and 3) with respect to sales process, freight services, and warehousing services. The export-price level of trade differed from the second level of trade in the home-market (channels 4 and 5) with respect to freight, delivery, and warehousing. We matched the export-price sale to a home-market sale at the same level of trade and did not make a level-of-trade adjustment.

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the date of the U.S. sale, as reported by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the

weighted-average dumping margin on stainless steel wire rods from India for the period December 1, 2005, through November 30, 2006, for Mukand Limited is 11.56 percent.

Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. See 19 CFR 351.310(c). If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. See 19 CFR 351.309(c)(1)(ii). Also, interested parties may file rebuttal briefs, limited to issues raised in the case briefs. See 19 CFR 351.309(d)(1). The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of the preliminary results in the **Federal Register**. See section 751(c)(3) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we calculated an importer-specific assessment rate for these preliminary results of review. Where the importer-specific assessment rate is above *de minimis* (i.e., 0.50 percent *ad valorem* or greater), we will instruct CBP to assess the importer-specific rate uniformly, as appropriate, on all entries of subject merchandise during the POR that were entered by the importer or sold to the customer. After 15 days of publication of the final results of review, the Department will issue instructions to CBP directing it to assess the final assessment rates (if above *de minimis*)

uniformly on all entries of subject merchandise made by the relevant importer or sold to the relevant customer during the POR.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification applies to POR entries of subject merchandise produced by Mukand where Mukand did not know that its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash-Deposit Requirements

The following cash-deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rate for Mukand will be the rate established in the final results of this review (except that if the rate is *de minimis*, i.e., less than 0.50 percent, no cash deposit will be required); (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair value (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) the cash-deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 48.80 percent, which is the "all others" rate established in the LTFV investigation. These cash-deposit rates, when imposed, shall remain in effect until further notice.

Notification to Importers This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

September 4, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-17993 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-890]

Wooden Bedroom Furniture From the People's Republic of China; Initiation of New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 12, 2007.

SUMMARY: The Department of Commerce (the "Department") received timely requests to conduct new shipper reviews of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC"). In accordance with 19 CFR 351.214(d)(1), we are initiating new shipper reviews for Dongguan Bon Ten Furniture Co., Ltd. ("Bon Ten") and Dongguan Mu Si Furniture Co., Ltd. ("Mu Si").

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Hua Lu, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4474 or (202) 482-6478, respectively.

SUPPLEMENTARY INFORMATION: The Department received timely requests from Bon Ten and Mu Si on July 27, 2007, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on wooden bedroom furniture from the PRC. See *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005).

Pursuant to 19 CFR 351.214(b)(2), in their requests for new shipper reviews, Bon Ten and Mu Si certified that they did not export wooden bedroom furniture to the United States during the period of investigation ("POI"); that since the initiation of the investigation they have never been affiliated with any company that exported subject

merchandise to the United States during the POI; and that their export activities were not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(iv), Bon Ten and Mu Si submitted documentation establishing the following: (1) the date on which they first shipped wooden bedroom furniture for export to the United States; (2) the volume of their first shipment; and (3) the date of their first sale to an unaffiliated customer in the United States.

The Department conducted customs queries to confirm that the shipment of Bon Ten and Mu Si had officially entered the United States via assignment of an entry date in the customs database by the U.S. Customs and Border Protection ("CBP"). We note that although Bon Ten and Mu Si submitted documentation regarding the volume of their shipments and the date of their first sale to an unaffiliated customer in the United States, our customs query shows that Bon Ten's and Mu Si's shipments entered the United States shortly after the anniversary month.

Under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the period of review ("POR"), but the entry occurs after the normal POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. The preamble to the Department's regulations states that both the entry and the sale should occur during the POR, and that under "appropriate" circumstances the Department has the flexibility to extend the POR. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27319-27320 (May 19, 1997). In this instance, Bon Ten's and Mu Si's shipments entered in the month following the end of the POR. The Department does not find that this delay prevents the completion of the review within the time limits set by the Department's regulations.

Initiation of New Shipper Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), and based on information on the record, we find that Bon Ten's and Mu Si's requests meet the initiation threshold requirements and we are initiating new shipper reviews for shipments of wooden bedroom furniture produced and exported by Bon Ten and Mu Si. See Memoranda to the File through Wendy J. Frankel, Director, New Shipper Initiation Checklist, dated August 31, 2007. The Department will

conduct these new shipper reviews according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review, initiated in the month immediately following the semi-annual anniversary month, will be the six-month period immediately preceding the semi-annual anniversary month. As discussed above, under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the POR, but the entry occurs after the normal POR, the POR may be extended. Therefore, the POR for the new shipper reviews of Bon Ten and Mu Si is January 1 through July 31, 2007.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Bon Ten and Mu Si, including a separate-rate section. The reviews will proceed if the responses provide sufficient indication that Bon Ten and Mu Si are not subject to either *de jure* or *de facto* government control with respect to their exports of wooden bedroom furniture. However, if Bon Ten or Mu Si does not demonstrate its eligibility for a separate rate, it will be deemed not separate from other companies that exported during the POI, and its new shipper review will be rescinded.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of wooden bedroom furniture produced and exported by Bon Ten and Mu Si must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise (*i.e.*, wooden bedroom furniture) at the PRC-wide entity rate of 216.01 percent.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are issued in accordance with section 751(a)(2)(B)

of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: August 31, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-17995 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Public Law 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Room 2104, 14th and Constitution Avenue, NW., Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 2104, at the above address.

Docket Number: 07-056. *Applicant:* Illinois Institute of Technology, 3300 South Federal Street, Chicago, IL 60616. *Instrument:* Micro Test Pendulum with Hot-Stage Extension & Spherical Indenters. *Manufacturer:* Micro Materials Ltd., United Kingdom. *Intended Use:* The instrument is intended to be used to investigate the micro-mechanical properties of metallic and inter-metallic material systems for structural applications. (2-3.5) Elevated temperature (>700 °C) micro-indentation tests will be performed on a range of experimental alloys and compounds to assist in an alloy development program. The System will be used to train graduate students and post-doctoral researchers as part of a research program on understanding the fundamental deformation mechanisms of high temperature structural materials.

The micro test pendulum with hot-stage extension and spherical indenters is capable of testing materials at temperatures in excess of 700 °C or at a load capacity of 10kN. Both of these features are critical in the assessment of mechanical properties of high strength materials at elevated temperature. Also, the horizontal design of the System

enables the insertion of a heat shield that prevents radiative heating of the sensitive electronics and allows for testing of specimens at temperatures in excess of 750 °C. Application accepted by Commissioner of Customs: August 12, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff Import Administration.

[FR Doc. E7-18015 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Recreational Fisheries Statistics Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 13, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Rob Andrews, NOAA, National Marine Fisheries Service, Fisheries Statistics Division, Phone: (301) 713-2328, ext. 148 or Rob.Andrews@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Marine recreational anglers are surveyed for catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*), as amended, regarding

conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of telephone surveys and on-site intercept surveys with recreational anglers. The current telephone surveys rely on random contacts with residents of coastal county households (Random Digit Dialing, or RDD). This method is extremely inefficient as a relatively small percentage of contacted households reports fishing during any survey period.

The recent amendments to the MSA require that future surveys of fishing effort target anglers registered or licensed at the State or Federal level. Such licensed-based surveys will greatly increase the efficiency of data collection as a much larger percentage of contacted individuals are likely to report fishing activity. However, most current saltwater licensing programs exempt large sections of the population from licensing requirements (age, military and disability exemptions). To compensate for gaps in survey coverage created by these exemptions, a dual-frame methodology has been developed that integrates licensed-based sampling with RDD sampling. The resulting survey provides an efficient means of collecting fishing effort data while maintaining nearly complete coverage of the angling population.

II. Method of Collection

Information is collected by means of telephone interviews.

III. Data

OMB Number: 0648-0052.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 723,325.

Estimated Time Per Response: 8 minutes for fishing households; 1 minute for non-fishing households.

Estimated Total Annual Burden Hours: 44,677.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 6, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-17918 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC45

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application from the Washington Department of Fish and Wildlife (WDFW) for an incidental take permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The duration of the proposed Permit is 5- years. This document serves to notify the public of the availability for comment of the permit application and of the associated draft environmental assessment (EA) before a final decision on whether to issue a Finding of No Significant Impact and the permit is made by NMFS. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Written comments on the application and draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on October 12, 2007.

ADDRESSES: Written comments on the application should be sent to Kristine Petersen, Salmon Recovery Division, 1201 NE., Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by e-mail to:

UCRFisheries.nwr@noaa.gov. Include in the subject line of the e-mail comment the following identifier: Comments on UCR recreational fisheries. Comments may also be sent via facsimile (fax) to (503) 872-2737. Requests for copies of the permit application should be directed to the Salmon Recovery Division, 1201 NE., Lloyd Boulevard, Suite 1100, Portland, OR 97232. The documents are also available on the Internet at <http://www.nwr.noaa.gov>. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230-5409.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen at (503) 230-5409 or e-mail: *kristine.petersen@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant units (ESUs) or distinct population segments (DPSs):

Steelhead (*Oncorhynchus mykiss*): endangered, naturally produced and artificially propagated Upper Columbia River (UCR) and threatened Middle Columbia River.

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring-run and threatened Snake River fall-run.

Background

Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits to non-Federal entities to take ESA-listed species if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity, under section 10(a)(1)(B) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

The National Environmental Policy Act (NEPA) requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. NMFS expects to take action on an ESA section 10(a)(1)(B) submittal received from the applicant. Therefore, the Service is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

On September 12, 2005, the WDFW submitted an application to NMFS for an ESA section 10(a)(1)(B) permit for

incidental take of ESA-listed anadromous fish species associated with recreational fishery programs in the upper Columbia River and its tributaries for a 5-year period. The receipt of the application was noticed in the **Federal Register** (70 FR 71087, November 11, 2005), and no comments were received. On February 2, 2007, the WDFW submitted a request to adjust the boundaries of one fishery previously proposed in the 2005 application. The application is being made available for comment a second time due to the addition of the fishery area adjustment. The proposed fisheries would target non-listed anadromous salmon and steelhead and resident game fish species. No fisheries that would target listed species are proposed in the application. Implementation of these fisheries would allow fishing for recreational purposes and would provide economic opportunities for local communities through the sale of licenses and equipment, and the conduct of other business and services related to recreational fisheries.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, a permit will be issued to the WDFW for the purpose of carrying out the fisheries management activities. NMFS will publish a record of its final action in the **Federal Register**.

The general effects on the environment considered include the impacts on the physical, biological, and socioeconomic environments of the Upper Columbia River Basin.

Dated: September 7, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7-17985 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC50

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Grouper Individual Fishing Quota (IFQ) Advisory Panel (AHGIFQAP).

DATES: The AHGIFQAP meeting will convene at 1 p.m. on Monday, October 1, 2007 and conclude no later than 3 p.m. on Tuesday, October 2, 2007.

ADDRESSES: The meeting will be held at the Hilton St. Petersburg, 333 First Street South, St. Petersburg, FL 33701; telephone 727-894-5000.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Stu Kennedy, Fishery Biologist, telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council has scheduled a meeting of the Ad Hoc Grouper IFQ Advisory Panel to discuss the scoping document for Amendment 29 to the Reef Fish Fishery Management Plan. Amendment 29 has alternatives for rationalizing effort and reducing overcapacity in the commercial Gulf of Mexico grouper fishery, including elimination of latent permits, a buyout or buyback program, permit endorsements, and Individual fishing quotas, and Individual transferable effort quotas.

Although other non-emergency issues not on the agenda may come before the AHGIFQAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the AHGIFQAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling (813) 348-1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 7, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E7-17949 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC49

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) VMS (Vessel Monitoring System)/Enforcement Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, October 1, 2007, at 9 a.m.

ADDRESSES: The meeting will be held at the New England Fishery Management Council Office, 50 Water Street, Mill #2, Newburyport, MA 01950; telephone: (978) 495-0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. The VMS/Enforcement Committee will review a Question and Answer document to be developed by the Northeast Regional Office highlighting the most asked questions about VMS. They will examine the requirements to only change fishing code from inside the demarcation line to the following VMS fisheries: herring, scallops and northeast multispecies. They will also examine inconsistent and duplicate regulations with respect to utilizing VMS as a vehicle to change or remove them.

2. The committee will approve/endorse the Law Enforcement Precepts from the Office of Law Enforcement.

3. They will receive a written report from NMFS on the network outages by vendor and vessel missing position reports by vendor.

4. Also on the agenda will be the review of an emergency contact list and discussion regarding distribution.

5. Other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: September 7, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E7-17948 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648-XA51]

New England Fishery Management Council; Public Informational Meeting.

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

ACTION: Notice of a public informational meeting.

SUMMARY: Trans-Boundary Resource Assessment Committee (TRAC) Industry/Science Data Exchange Meeting.

DATES: The meeting will be held on Thursday, June 7, 2007, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the New Bedford Free Public Library, 613 Pleasant Street, New Bedford, MA 02740; telephone: (508) 991-6279.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: Amendment 13 to the Northeast

Multispecies Fishery Management Plan adopted a system to coordinate the management of trans-boundary stocks of cod, haddock, and yellowtail flounder with Canada. As part of that system, each year, the Trans-Boundary Resource Assessment Committee (TRAC) conducts assessments of Eastern Georges Bank cod and haddock, and Georges Bank yellowtail flounder. These assessments provide the scientific advice used to determine management measures (including Total Allowable Catches, or TACs) for the U.S./Canada fishing area (see 50 CFR 648.85(a)). The TRAC is scheduled for June 12–15, 2007 in St. Andrews, New Brunswick, Canada.

Items for discussion at this meeting:

1. Northeast Fisheries Science Center assessment biologists will brief the public on the catches (landings and discards) and survey data that will be used in the 2007 assessments of Eastern Georges Bank cod and haddock, and Georges Bank yellowtail flounder.

2. Fishermen are encouraged to attend and provide their observations on fishing for cod, haddock, and yellowtail flounder on Georges Bank in calendar year 2006.

Assessment results will not be presented because the assessment will not be completed until the following week.

Discussion will be restricted to those issues specifically identified in this notice.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7-17950 Filed 9-11-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Integrating Sensor-Collected Intelligence will meet in closed session on October 16–17, 2007; at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. The briefing will contain proprietary material and ensuing discussions will be at the collateral secret level.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: Assess the sufficiency of support for U.S. military forces by current and planned intelligence, surveillance and reconnaissance systems.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker. Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce the **Federal Register** when the findings and recommendations of the October 16–17, 2007 meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statements to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: MAJ. Chad Lominac, USAF, Defense

Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via email at charles.lominac@osd.mil, or via phone at (703) 571–0081.

Dated: September 5, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4464 Filed 9–11–07; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meetings.

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Science Board Task Force on Integrating Sensor-Collected Intelligence will meet in closed session on *December 3–4, 2007* at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. The briefing will contain proprietary material and ensuing discussions will be at the collateral secret level.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: Assess the sufficiency of support for U.S. military forces by current and planned intelligence, surveillance and reconnaissance systems.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker. Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the December 3–4, 2007 meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least

10 calendar days prior to the meeting that is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301-3140, via e-mail at charles.lominac@osd.mil, or via phone at (703) 571-0081.

Dated: September 5, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07-4465 Filed 9-11-07; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meetings

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Science Board Task Force on Integrating Sensor-Collected Intelligence will meet in closed session on *November 19-20, 2007*; at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. The briefing will contain proprietary material and ensuing discussions will be at the collateral secret level.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: Assess the sufficiency of support for U.S. military forces by current and planned intelligence, surveillance and reconnaissance systems.

The task force's findings and recommendations, pursuant to 41 CFR 102-3.140 through 102-3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker. Pursuant to 41 CFR 102-3.120 and 102-3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and

recommendations of the November 19-20, 2007 meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301-3140, via e-mail at charles.lominac@osd.mil, or via phone at (703) 571-0081.

Dated: September 5, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07-4466 Filed 9-11-07; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meetings

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Science Board Task Force on Integrating Sensor-Collected Intelligence will meet in closed session on *September 25-26, 2007*; at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. The briefing will contain proprietary material and ensuing discussions will be at the collateral secret level.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: Assess the sufficiency of support for U.S. military forces by current and planned intelligence, surveillance and reconnaissance systems.

The task force's findings and recommendations, pursuant to 41 CFR 102-3.140 through 102-3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker. Pursuant to 41 CFR 102-3.120 and 102-3.150, the Designated Federal Officer for the Defense Science Board will determine and announce the **Federal Register** when the findings and recommendations of the September 25-26, 2007 meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301-3140, via e-mail at charles.lominac@osd.mil, or via phone at (703) 571-0081.

Dated: September 5, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07-4467 Filed 9-11-07; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Sunshine Act Meeting; Defense Task Force on Sexual Assault in the Military Services; Correction

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness); DoD.

ACTION: Notice of committee meeting; correction.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, The Defense Task Force on Sexual Assault in the Military Services published a document in the

Federal Register of August 14, 2007 concerning the Place of Meeting, Date, Time and Purpose of the Meeting. Due to scheduling changes beyond the control of the Task Force the schedule for the Task Force's September 19, 2007 administrative working meeting must be changed. Since these changes were subsequent to the Task Force publishing its meeting notice in the **Federal Register**, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

The purpose for the administrative working meeting remains unchanged and, pursuant to 41 CFR 102-3.160(b), the meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: LT Shaka Thorne, (703) 325-6640.

Correction

In the **Federal Register** of August 14, 2007 in FR Doc. 07-3988, on page 45422, in the first column, correct the "Place of Meeting" caption to read:

Place of Meeting:

7:30 a.m. to 9 a.m.—Pentagon Conference Center, room B2, Pentagon, Washington, DC 20301;
9 a.m. to 9:30 a.m.—Room 3E788, Pentagon, Washington, DC 20301; and
9:30 a.m. to 5:30 p.m.—Crystal Gateway One, 1235 South Clark Street, Washington Headquarters Services (WHS) Conference Room, Suite 940, Arlington, Virginia 22202.

Name of Committee: Defense Task Force on Sexual Assault in the Military Services (hereafter referred to as the Task Force)

Dated: September 7, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07-4499 Filed 9-10-07; 1:09 pm]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Announcement of IS-GPS-800 Interface Control Working Group (ICWG) Meeting

AGENCY: Department of the Air Force.

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Global Positioning Systems Wing will be hosting a technical working group meeting to discuss the MBOC implementation and bandwidth updates as specified in Draft IS-GPS-800, Navstar GPS Space Segment/

Navigation User L1C Interfaces. The discussion will include addressing those comments submitted from the review of the Draft IS-GPS-800. There will also be an Information Only Forum covering future change considerations for IS-GPS-800, IS-GPS-200D and IS-GPS-705.

For those who would like to attend and participate in this ICWG meeting, you are requested to register to attend the meeting by 18 September 2007. Please send the registration to thomas.davis@linquest.com and provide your name, organization, telephone number, address, and country of citizenship. For those who would like to present material related to IS-GPS-800, please submit your presentation material and required length of presentation time to thomas.davis@linquest.com by September 18, 2007. More information, including a preliminary agenda, will be posted at: <http://www.losangeles.af.mil/library/factsheets/factsheet.asp?id=9364>.

DATES: Tuesday, 25 September 2007: 8:30 a.m.–5 p.m. at Fort Worth Convention Center, Room 110, 1201 Fort Worth, Texas 76102 U.S.A.

FOR FURTHER INFORMATION CONTACT: Thomas Davis, thomas.davis@linquest.com, 1-310-416-8440, or Captain Michael Whiting, Michael.Whiting@losangeles.af.mil, 1-310-653-3944.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7-17958 Filed 9-11-07; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

[Requisition No. 07-013]

Membership of the Defense Logistics Agency (DLA) Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership—2007 DLA PRB.

SUMMARY: This notice announces the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director,

Defense Logistics Agency (DLA) with respect to pay level adjustments and performance awards and other actions related to management of the SES cadre.

DATES: *Effective Date:* September 26, 2007.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, Virginia 22060-6221.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Salo, SES Program Manager, Human Resources (J-1), Defense Logistics Agency, Department of Defense, (703) 767-6406.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 12 month term, which begins on September 26, 2007.

PRB Chair: Major General Arthur Morrill III, USAF.

Members: Mr. Jeffrey Neal, Director, Human Resources, Ms. Mae De Vincentis, Director, Information Operations/CFO, Mr. James McClaugherty, Deputy Commander, Defense Supply Center Columbus.

Lieutenant General Robert T. Dail,

USA, Director, Defense Logistics Agency.

[FR Doc. 07-4462 Filed 9-11-07; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 12, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to oir_submission@omb.eop.gov or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting

comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: September 6, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: An Impact Evaluation of Early Literacy Programs.

Frequency: Annually.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 18.

Abstract: The Study will help determine whether early literacy preschool programs have an impact on participating children, and, if so, whether such effects vary among different types of children, families, schools and children's preschool and program experiences. The information will guide decision making in preschool classroom practices and interventions to improve acquisition of early skills and program implementation. The respondents will be preschool children, teachers, paraprofessionals, and parents.

Requests for copies of the information collection submission for OMB review

may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3405. 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 ICDocketMgr@ed.gov 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. 07-4445 Filed 9-11-07; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 12, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to oir_submission@omb.eop.gov or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 6, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Early Childhood Longitudinal Study Birth Cohort (ECLS-B), Kindergarten Year Delayed Entry and Repeaters.

Frequency: One-time.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 10,483.

Burden Hours: 4,026.

Abstract: The ECLS-B is part of a longitudinal studies program. The ECLS-B is designed to follow a national representative sample of children born in 2001 from nine months of age through kindergarten. The cohort has already been seen at nine months and at two years. The current effort is directed towards seeing them in their kindergarten year. The children turned five in 2006, and while the majority of these children were in kindergarten year in 2006, some of them are repeating kindergarten and some were delayed entering kindergarten. It is these children, who either are repeating kindergarten or were delayed entering kindergarten, who are being contacted in this data collection.

Requests for copies of the information collection submission for OMB review may be accessed from <http://>

edicsweb.ed.gov, by selecting the "Browse Pending Collections" link and by clicking on link number 3385. 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 *ICDocketMgr@ed.gov* 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. 07-4446 Filed 9-11-07; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA Nos: 84.334A and 84.334S]

Office of Postsecondary Education, Teacher and Student Development Programs Service

ACTION: Notice Announcing Technical Assistance Workshops for fiscal year (FY) 2008 Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program.

SUMMARY: The Department expects to hold competitions for new State and Partnership grants under the GEAR UP program in FY 2008. This notice provides information about four one-day technical assistance workshops to assist institutions of higher education, local educational agencies, and States interested in preparing grant applications for FY 2008 new awards under the GEAR UP program. Program staff will present information about the purpose of the GEAR UP Program, selection criteria, application content, submission procedures, and matching and reporting requirements.

Although the Department has not yet announced an application deadline date in the **Federal Register** for the FY 2008 competitions, the Department is holding these workshops to give potential applicants guidance for preparing applications for the competitions we expect to conduct in FY 2008. Specific requirements for the FY 2008 competitions will be published in a separate **Federal Register** notice. This notice announces the technical assistance workshops only.

FOR FURTHER INFORMATION CONTACT: Angela K. Oliphant, GEAR UP Program, U.S. Department of Education, 1990 K Street, NW., Room 6133, Washington, DC 20006-8524. Telephone: (202) 502-7676.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

The technical assistance workshops will be held as follows:

1. Sacramento, CA: Monday, September 10, 2007. Miyako Hotel, 1625 Post Street, San Francisco, CA 94115, Telephone: 415-922-3200.
2. Chicago, IL: Wednesday, September 12, 2007. Radisson Hotel Northbrook, 2875 N. Milwaukee Avenue, Northbrook, IL 60062, Telephone: 847-298-2525.
3. Atlanta, GA: Friday, September 14, 2007. Hilton Atlanta, 255 Courtland Street NE., Atlanta, Georgia, 30303, Telephone: 404-659-2000.
4. Philadelphia, PA: Monday, September 17, 2007. The Ritz Carlton, Ten Avenue of the Arts, Philadelphia, PA 19102, Telephone: 215-523-8000.

All Technical Assistance Workshop sessions will be conducted from 9 a.m. to 5 p.m. each day. Registration is from 8 a.m. to 9 a.m. on the day of the session. There is no fee for these workshops. However, space is limited. Attendees are required to make their own reservations directly with the hotel. The Department has reserved a limited number of rooms at each of the hotel sites at a special government room rate. To reserve this rate, be certain to inform the hotel that you are attending the "U.S. Department of Education GEAR UP Program Technical Assistance Workshop." We encourage attendance from those who will be responsible for providing technical support for uploading the application materials onto the Grants.gov Apply site.

Assistance to Individuals with Disabilities Attending the Technical Assistance Workshop

The technical assistance workshop site is accessible to individuals with disabilities. If you need an auxiliary aid or service to participate in the workshop (e.g., interpreting service, assistive listening device, or materials in an alternative format), notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks

before the scheduled workshop date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document

You can 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>.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have any 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>.

Program Authority: 20 U.S.C. 1070a-21.

Dated: September 7, 2007.

Diane Auer Jones,
Assistant Secretary for Postsecondary
Education.

[FR Doc. 07-4471 Filed 9-10-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07-1136-000]

Camp Grove Wind Farm LLC; Notice of Issuance of Order

August 31, 2007.

Camp Grove Wind Farm LLC (Camp Grove) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Camp Grove also requested waivers of various Commission regulations. In particular, Camp Grove requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Camp Grove.

On August 30, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34

(Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Camp Grove, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is October 1, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Camp Grove is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Camp Grove, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Camp Grove's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17929 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07-1194-000]

Castlebridge Energy Group LLC; Notice of Issuance of Order

September 6, 2007.

Castlebridge Energy Group LLC (Castlebridge Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Castlebridge Energy also requested waivers of various Commission regulations. In particular, Castlebridge Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Castlebridge Energy.

On August 31, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Castlebridge Energy, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is October 1, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Castlebridge Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Castlebridge Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Castlebridge Energy's

issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17964 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-390-000]

Chandler Wind Partners, LLC; Notice of Issuance of Order

September 6, 2007.

Chandler Wind Partners, LLC (Chandler) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Chandler also requested waivers of various Commission regulations. In particular, Chandler requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Chandler.

On December 7, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Chandler, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is September 20, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Chandler is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Chandler, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Chandler's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17965 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07-939-000; ER07-939-001]

Columbia Utilities Power, LLC; Notice of Issuance of Order

August 31, 2007.

Columbia Utilities Power, LLC (Columbia Utilities) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Columbia Utilities also requested waivers of various Commission regulations. In particular, Columbia

Utilities requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Columbia Utilities.

On August 30, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Columbia Utilities, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is October 1, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Columbia Utilities is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Columbia Utilities, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Columbia Utilities' issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the

"e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17927 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07-83-000]

Electric Transmission Texas, LLC; Notice of Compliance Filing

September 6, 2007.

Take notice that on September 4, 2007, Electric Transmission Texas, LLC, tendered for filing a supplement to it July 19, 2007 filing, to respond to informal inquiries from the Commission's advisory staff concerning the AEP Texas Central Company's Laredo interconnection with CFE.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on September 18, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17968 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06-5-006]

Empire State Pipeline, Empire Pipeline, Inc.; Notice of Compliance Filing

September 6, 2007.

Take notice that on August 30, 2007, Empire State Pipeline and Empire Pipeline, Inc. (Empire) tendered for filing an executed firm transportation agreement with KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KeySpan). Empire states that it is filing the executed firm transportation agreement with KeySpan pursuant to Ordering Paragraph Z of the Commission's December 21, 2006 order in this proceeding.

Empire states that pursuant to § 388.112 of the Commission's regulations, it is requesting privileged and confidential treatment of the negotiated rate exhibit (Exhibit B) attached to the firm transportation agreement with Empire. Empire explains that because the negotiated rate exhibit is competitively sensitive and its release at this time could unnecessarily harm the competitive position of the parties, it requests that the negotiated rate exhibit be exempted from the disclosure requirements of the Freedom of Information Act. Empire indicates that in compliance with Ordering Paragraph AA of the December 21, 2006 order, it will publicly file either the negotiated rate exhibit or numbered tariff sheets containing all required information not less than 90 days prior to commencement of service.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu

of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time September 19, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17969 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA07-32-000; ER07-1296-000; ER07-1296-001]

Entergy Services, Inc.; Notice of Filing

September 5, 2007.

Take notice that on August 20, 2007, Entergy Services, Inc. (ESI), on behalf of the Entergy Operating Companies, submits a Motion Requesting Re-Docketing of Notices of Termination and Tariff Sheets for the three Notices of Termination and certain of the tariff sheet included in ESI's July 13, 2007, compliance filing submitted in Docket No. OA07-32-000. ESI also requests they be permitted to retain the July 13, 2007 effective date originally requested by ESI in its compliance filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to

serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on September 19, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17934 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07-1212-000]

Forked River Power LLC; Notice of Issuance of Order

August 31, 2007.

Forked River Power LLC (Forked River) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Forked River also requested waivers of various Commission regulations. In particular, Forked River requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Forked River.

On August 30, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any

person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Forked River, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is October 1, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Forked River is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Forked River, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Fork River's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-17928 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 5, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP07-574-001.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Substitute Fourth Revised Sheet 263G to FERC Gas Tariff, Fifth Revised Volume 1, effective 11/1/07.

Filed Date: 08/31/2007.

Accession Number: 20070904-0301.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-606-001.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company resubmits its Fifth Revised Sheet 171, et al. to FERC Gas Tariff, First Revised Volume 1-A.

Filed Date: 08/31/2007.

Accession Number: 20070904-0303.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-666-000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits First Revised Sheet 380K, et al. to FERC Gas Tariff, First Revised Volume 1, to become effective 10/1/07.

Filed Date: 08/31/2007.

Accession Number: 20070904-0304.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-667-000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits Third Revised Sheet 229A.01 to its FERC Gas Tariff, First Revised Volume 1, effective 10/1/07.

Filed Date: 08/31/2007.

Accession Number: 20070904-0305.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-668-000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits Forty-Seventh Revised Sheet 11A, et al. to FERC Gas Tariff, First Revised Volume 1, to effective 10/1/07.

Filed Date: 08/31/2007.

Accession Number: 20070904-0306.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-670-000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits First Revised Sheet 0, et al. to FERC Gas Tariff, Third Revised Volume 1, effective 10/1/07.

Filed Date: 08/31/2007.

Accession Number: 20070904-0308.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-671-000.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits Sixth Revised Sheet 7, et al. to FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/07.

Filed Date: 08/31/2007.

Accession Number: 20070904-0309.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-672-000.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits Nineteenth Revised Sheet 4, et al. to FERC Gas Tariff, Second Revised Volume 1, effective 10/1/07.

Filed Date: 08/31/2007.

Accession Number: 20070904-0310.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-673-000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corp submits its Thirty First Revised Sheet 8, et al. to FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0311.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-674-000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Panhandle Eastern Pipe Line Co, LP submits its Fifteenth Revised Sheet 4, et al. to its FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0312.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-675-000.

Applicants: Portland Natural Gas Transmission System.

Description: Portland Natural Gas Transmission System submits its Second Revised Sheet 100, et al. to its FERC Gas Tariff to establish a revised Annual Charge Adjustment charge.

Filed Date: 08/31/2007.

Accession Number: 20070904-0314.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-676-000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Sea Robin Pipeline Co, LLC submits its 1st Rev Second Revised Sheet 5, et al. to its FERC Gas Tariff, second revised Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0313.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-677-000.
Applicants: Southern LNG, Inc.
Description: Southern LNG, Inc submits its Eighteenth Revised Sheet 5, et al. to its FERC Gas Tariff, Original Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0315.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-678-000.
Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Co submits its Sixty-Eighth Revised Sheet 14, et al. to its FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0316.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-679-000.
Applicants: Southwest Gas Storage Company.

Description: Southern Gas Storage Co submits its 1st Rev Nineteenth Revised Sheet 5, et al. to its FERC Gas Tariff, First Revised Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0317.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-680-000.
Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Co, LLC submits its Fourteenth Revised Sheet 10, et al. to its FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0318.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-681-000.
Applicants: Trunkline LNG Company, LLC.

Description: Trunkline LNG Co, LLC submits its Thirteenth Revised Sheet 5, et al. to its FERC Gas Tariff, Original Volume 1-A.

Filed Date: 08/31/2007.

Accession Number: 20070904-0319.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-682-000.
Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Panhandle Eastern Pipe Line Co, LP submits its First Revised Sheet 215, et al. to its FERC Gas Tariff, Third Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0320.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-683-000.
Applicants: Sea Robin Pipeline Company, LLC.

Description: Sea Robin Pipeline Co, LLC submits its First Revised Sheet 0, et al. to its FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0321.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-684-000.
Applicants: Southwest Gas Storage Company.

Description: Southwest Gas Storage Co submits its Second Revised Sheet 0, et al. to its FERC Gas Tariff, First Revised Volume 1.

Filed Date: 08/31/2007.

Accession Number: 20070904-0322.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP07-685-000.
Applicants: Trunkline LNG Company, LLC.

Description: Trunkline LNG Co, LLC submits its Second Revised Sheet 171, et al. to its FERC Gas Tariff, Second Volume 1-A.

Filed Date: 08/31/2007.

Accession Number: 20070904-0323.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP96-312-166.
Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits Gas Transportation Agreement with PSEG Energy Resources and Trade, LLC etc.

Filed Date: 08/31/2007.

Accession Number: 20070904-0302.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 2007.

Docket Numbers: RP97-81-041.
Applicants: Kinder Morgan Interstate Gas Trans, LLC.

Description: Kinder Morgan Interstate Gas Transmission, LLC submits Sixteenth Revised Sheet 4G.01, et al. to its FERC Gas Tariff, Fourth Revised Volume 1-A, effective 9/1/07.

Filed Date: 08/31/2007.

Accession Number: 20070831-0085.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 12, 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 docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7-17914 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-2760-000]

Ridge Crest Wind Partners, LLC; Notice of Issuance of Order

September 6, 2007.

Ridge Crest Wind Partners, LLC (Ridge Crest) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Ridge Crest also requested waivers of various Commission regulations. In particular, Ridge Crest requested that the

Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Ridge Crest.

On September 6, 2001, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Ridge Crest, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is September 20, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Ridge Crest is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Ridge Crest, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Ridge Crest's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17966 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07-94-000]

Montana Consumer Counsel, Complainant, v. PPL Montana, LLC, PPL Energy Plus, LLC, PPL Colstrip I, LLC, PPL Colstrip II, LLC, Respondent.; Notice of Complaint

September 6, 2007.

Take notice that on September 5, 2007, the Montanan Consumer Counsel (Montana Consumer), filed a complaint against PPL Montana LLC, PPL Energy Plus, LLC, PPL Colstrip I, LLC, and PPL Colstrip II, LLC (collectively, PPL-M), pursuant to Federal Power Act (FPA) section 206. The Complaint states in part:

Because PPL-M has market power and its rates reflect that fact, the Montana Consumer requests that the Commission institute an investigation into the justness and reasonableness of PPL-M's rates and set a refund effective date for those rates. The refund effective date should be the earliest permissible under the FPA section 206(b), 16 U.S.C. 824e(b). Montana Consumer recognizes that the Commission has ruled that PPL-M is entitled to market rate authority. Montana Consumer files this complaint as a protective matter so that if the Court of Appeals reverses the Commission's orders, the consumers of Montana will be protected against unnecessary impediments to the granting of effective relief.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on October 5, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17967 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 6, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03-1207-005.

Applicants: AES Delano, Inc.

Description: AES Delano, Inc.'s Notice of Change in Status.

Filed Date: 08/16/2007.

Accession Number: 20070816-5011.

Comment Date: 5 p.m. Eastern Time on Thursday, September 13, 2007.

Docket Numbers: ER07-1221-001.

Applicants: Rensselaer Cogeneration LLC.

Description: Rensselaer Cogeneration LLC submits its triennial updated market power analysis.

Filed Date: 09/04/2007.

Accession Number: 20070906-0057.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07-1293-001.

Applicants: Upper Peninsula Power Company.

Description: Upper Peninsula Power Company submits an executed version of the Short-Term Sales Agreement with the Escanaba Municipal Utility for the sales of short-term capacity and energy etc.

Filed Date: 08/31/2007.

Accession Number: 20070905-0021.

Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Docket Numbers: ER07-1305-001.

Applicants: Port Washington Generating Station LLC.

Description: Port Washington Generating Station, LLC submits the executed Power Purchase Agreement Providing for Sales of Test Power with Wisconsin Electric Power Co.

Filed Date: 09/04/2007.

Accession Number: 20070905-0065.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07-1331-000.

Applicants: Indianapolis Power & Light Company.

Description: Indianapolis Power & Light Co., submits a letter agreement with Wabash Valley Power Association, Inc., re an extension of Rate Schedule FERC 21.

Filed Date: 09/04/2007.

Accession Number: 20070905-0069.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07-1332-000.

Applicants: Smoky Hills Wind Farm, LLC.

Description: Smoky Hills Wind Farm, LLC submits an application for order accepting market-based rate tariff, granting waivers and blanket authority.

Filed Date: 09/04/2007.

Accession Number: 20070905-0070.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07-1333-000.

Applicants: New England Power Company.

Description: New England Power Co., submits an amended Large Generator Interconnection Agreement with Dominion Energy Salem Harbor, LLC.

Filed Date: 08/31/2007.

Accession Number: 20070905-0071.

Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Docket Numbers: ER07-1338-000.

Applicants: ISO New England Inc.

Description: ISO New England Inc., et al. submits revisions to the Forward Capacity Market rules conditionally accepted by FERC on 4/16/07.

Filed Date: 08/31/2007.

Accession Number: 20070905-0074.

Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on

or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7-17946 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459-176]

Union Electric Company, dba AmerenUE; Notice of Availability of Environmental Assessment

August 31, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for non-project use of project lands and waters at the Osage Project (FERC No. 459) and has prepared an Environmental Assessment (EA) for the proposed non-project use. The non-project use of project lands and waters

is located at mile marker 3.5 of the Osage Arm of the Lake of the Ozarks, at the mouth of Jackson Branch Cove. The Osage Project is located in Benton, Camden, Miller, and Morgan Counties, Missouri.

In the application, Union Electric Company, dba AmerenUE requests Commission approval to authorize Atlantis Island LLC to construct 17 docks with 374 slips at the Atlantis Island condominiums. The EA contains Commission staff's analysis of the probable environmental impacts of the proposal and concludes that approving the licensee's application, with staff's recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled "Order Modifying and Approving Non-Project Use of Project Lands and Waters," which was issued August 23, 2007, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "elibrary" link. Enter the project number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-17923 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971-079 Idaho/Oregon]

Idaho Power Company; Notice of Availability of the Final Environmental Impact Statement for the Hells Canyon Project

August 31, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for license for the Hells Canyon Project (FERC No. 1971), located on the Snake River in Washington and Adams

Counties, Idaho, and Wallowa and Baker Counties, Oregon, and has prepared a Final Environmental Impact Statement (final EIS) for the project. About 5,270 acres of federal lands administered by the Forest Service and the Bureau of Land Management (Payette and Wallowa-Whitman National Forests and Hells Canyon National Recreational Area) are included within the project boundary.

The final EIS contains staff evaluations of the applicant's proposal and the alternatives for relicensing the Hells Canyon Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the final EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426, 1-866-208-3676, public.referenceroom@ferc.gov. The final EIS also may be viewed on the Commission's Web site at <http://www.ferc.gov> under 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.

CD versions of the final EIS have been mailed to everyone on the mailing list for the project. Copies of the CD, as well as a limited number of paper copies, are available from the Public Reference Room identified above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Alan Mitchnick at (202) 502-6074, alan.mitchnick@ferc.gov; or Emily Carter at (202) 502-6512, emily.carter@ferc.gov.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-17925 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P-432-113]

Progress Energy Carolinas, Inc.; Notice of Application for Temporary Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

August 31, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for temporary variance of reservoir elevation, dissolved oxygen and minimum flow release requirements.

b. *Project No.:* 432-113.

c. *Date Filed:* August 27, 2007.

d. *Applicant:* Progress Energy Carolinas, Inc.

e. *Name of Project:* Walters Hydroelectric Project.

f. *Location:* On the Pigeon River, in Haywood County, North Carolina, just upstream of the State of Tennessee.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Larry Mann, Progress Energy Carolinas Inc., 179 Tillery Dam Road, Mount Gilead, NC 27306, (910) 439-5211 extension 1202.

i. *FERC Contact:* Andrea Claros, (202) 502-8171; e-mail: andrea.claros@ferc.gov.

j. *Deadline for filing comments, motions to intervene and protests:* October 1, 2007.

Please include the project number (P-432) on any comments or motions filed. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on

that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Progress Energy Carolinas is requesting a temporary variance of the requirements for lake level, dissolved oxygen and minimum flow. Due to persistent drought conditions in the project area and the need to maintain a minimum reservoir elevation to prevent erosion of dioxin laden lake sediments, Progress Energy requests that it be allowed to reduce flow releases below the minimum flow requirement of 100 cubic feet per second if the Walters Lake reaches an elevation of 2234 feet, and to stop all releases from the powerhouse if Walters Lake reaches elevation 2232 feet. Only flows from Big Creek, the 12 mile bypassed reach of the Pigeon River, and other small tributaries will provide flow. Progress Energy proposes to resume minimum flow releases when Walters Lake is at and above an elevation of 2236 feet. The licensee proposes to limit complete shutdown of flow releases to periods not to exceed 7 days at elevation above 2232 feet. Progress Energy has consulted with Tennessee Wildlife Resources Agency and the North Carolina Department of Environment and Natural Resources. These agencies concur with the request. On August 31, 2007, the Commission granted the licensee's requests, but reserved authority to require changes in project operation based upon comments received from this notice.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or by calling (202) 502-8371, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docsfiling/esubscription.asp> to be notified via e-mail or new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email 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, and 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. Any filing must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments*: Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(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. E7-17924 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12818-000; Project No. 12845-000]

Free Flow Power Corporation; FFP Project 14 LLC; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 5, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications*: Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed*: Free Flow Power

Corporation, filed the application for Project No. 12818-000 on July 23, 2007.

FFP Project 14, LLC filed the application for Project No.12845-000 on July 25, 2007.

c. Name of the project is Thirty-five Mile Point Project. The project would be located on the Mississippi River in St Charles Parish, Louisiana. The project uses no dam or impoundment.

d. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825f.

e. *Applicants Contacts*: For the Free Flow Power Corporation: Mr. Dan Irvin, Free Flow Power Corporation, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536. FFP Project 7, LLC: Mr. Dan Irvin, FFP Project 7, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536

f. *FERC Contact*: Robert Bell, (202) 502-6062.

g. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12818-000 or P-12845-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects*: The project proposed by Free Flow Power Corporation would consist of: (1) 1,200 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 24 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The Free Flow Power Corporation, project would have an average annual generation of 105.12 gigawatt-hours and be sold to a local utility.

The project proposed by FFP Project 20, LLC would consist of: (1) 1,200 proposed 20 kilowatt Free Flow generating units having a total installed

capacity of 24 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Project 14, LLC, project would have an average annual generation of 201.48 gigawatt-hours and be sold to a local utility.

i. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item e above.

j. *Competing Preliminary Permit*: Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

k. *Competing Development Application*: Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

l. *Notice of Intent*: A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

m. *Proposed Scope of Studies Under Permit*: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*: Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-17931 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 12816-000 and 12869-000]

Free Flow Power Corporation and FFP Project 20 LLC; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

September 5, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications*: Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed*:

Free Flow Power Corporation, filed the application for Project No. 12816-000 on July 23, 2007.

FFP Project 24, LLC filed the application for Project No. 12869-000 on July 25, 2007.

c. Name of the project is General Hampton Project. The project would be located on the Mississippi River in Ascension and St. James Parishes, Louisiana. The project uses no dam or impoundment.

d. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.

e. *Applicants Contacts*: For the Free Flow Power Corporation: Mr. Dan Irvin, Free Flow Power Corporation, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536. FFP Project 7, LLC: Mr. Dan Irvin, FFP Project 7, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

f. *FERC Contact*: Robert Bell, (202) 502-6062.

g. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

f. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages

electronic filings. Please include the project number (P-12816-000 or P-12869-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects*: The project proposed by Free Flow Power Corporation would consist of: (1) 2,300 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 46 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The Free Flow Power Corporation, project would have an average annual generation of 201.48 gigawatt-hours and be sold to a local utility.

The project proposed by FFP Project 20, LLC would consist of: (1) 2,300 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 46 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Project 22, LLC, project would have an average annual generation of 201.48 gigawatt-hours and be sold to a local utility.

i. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail ferconlinesupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item e above.

j. *Competing Preliminary Permit*: Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

k. Competing Development

Application: Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

l. Notice of Intent: A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION",

"PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-17932 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12815-000; Project No. 12844-000]

Free Flow Power Corporation; FFP Project 24 LLC; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

September 5, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. Type of Applications: Preliminary Permit (Competing)

b. Applicants, Project Numbers, and Dates Filed: Free Flow Power Corporation, filed the application for Project No. 12815-000 on July 23, 2007.

FFP Project 24, LLC filed the application for Project No.12844-000 on July 25, 2007.

c. Name of the project is Point Pleasant Project. The project would be located on the Mississippi River in Iberville Parish, Louisiana. The project uses no dam or impoundment.

d. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a-825r.

e. Applicants Contacts: For the Free Flow Power Corporation: Mr. Dan Irvin, Free Flow Power Corporation, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536. FFP Project 7, LLC: Mr. Dan Irvin, FFP Project 7, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

f. FERC Contact: Robert Bell, (202) 502-6062.

g. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12815-000 or P-12844-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. Description of Projects: The project proposed by Free Flow Power Corporation would consist of: (1) 1,100 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 22 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The Free Flow Power Corporation project would have an average annual generation of 96.36 gigawatt-hours and be sold to a local utility.

The project proposed by FFP Project 22, LLC would consist of: (1) 1,100 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 22 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Project 22, LLC, project would have an average annual generation of 96.36 gigawatt-hours and be sold to a local utility.

i. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov>

www.ferc.gov using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item e above.

j. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

k. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

l. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

m. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide

whether to proceed with the preparation of a development application to construct and operate the project.

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", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-17933 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2323-172]

TransCanada Hydro Northeast, Inc.; Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

September 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Non-Project Use of Project Lands and Waters.
- b. *Project No:* 2323-172.
- c. *Date Filed:* August 13, 2007.
- d. *Applicant:* Mount Snow Ski Resort.
- e. *Name of Project:* Deerfield River Hydroelectric Project.
- f. *Location:* The project, consisting of eight developments, is located on the Deerfield River, in Windham and Bennington Counties, Vermont, and Franklin and Berkshire Counties, Massachusetts.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Applicant Contact:* Kelly Pawlak, General Manager, Mount Snow Ski Resort, 12 Pisgah Road, West Dover, VT 05356; (802) 464-4119.
- i. *FERC Contact:* Andrea Claros, Telephone (202) 502-8171, and e-mail: andrea.claros@ferc.gov.
- j. *Deadline for filing comments, motions to intervene, and protest:* October 9, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Mount Snow seeks authorization to construct a 18,000 foot pipeline from Somerset Reservoir, located on the East Branch of the Deerfield River, to Mount Snow Ski Resort, allowing up to 484 million

gallons of water per season (October–March) to be pumped into Mount Snow's snowmaking system. Somerset Reservoir is one development of the Deerfield River Hydroelectric Project, owned by TransCanada Hydro Northeast, Inc. Two pump houses, one at Somerset Reservoir and one at the base of Mount Snow North Face would be built. The current in-stream impoundment used for snowmaking, Snow Lake on the North Branch Deerfield River, would be taken off-stream, and the stream channel would be restored. Carinthia Pond, also currently used for snowmaking, would serve as a short-term water transfer station. Implementation of the proposed project would not affect TransCanada's water flows or water level requirements.

1. *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 email 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. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number (P–2323) of the

particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17963 Filed 9–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD07–14–000]

Hydrokinetic Pilot Project Workshop; Supplemental Notice of Technical Conference With Agenda and Soliciting Comments

August 31, 2007.

On July 19th, 2007, the Federal Energy Regulatory Commission issued a notice of a technical conference, to be led by Commissioner Philip D. Moeller, with Commissioner Jon Wellinghoff participating, to be held on October 2, 2007, in Portland, Oregon. This supplemental notice provides more detailed information and establishes an agenda, which is attached.

The conference will take place at the Bonneville Power Administration's Auditorium, at 911 NE. 11th Ave., Portland, Oregon, from 10 a.m. to 4 p.m. (PST). All interested persons may attend; there is no fee. Registration is not required, but is appreciated for planning purposes; please register at <https://www.ferc.gov/whats-new/registration/hydrokinetic-10-07-form.asp>. Following the conference there will be a 30-day written comment period.

The purpose of the conference will be to present Commission staff's proposed licensing process for hydrokinetic energy pilot projects and to seek feedback from representatives of industry, state and federal agencies, Non-Governmental Organizations,

Native American tribes, and members of the public.

The goal of the proposed process is to complete licensing in as few as six months, to provide for Commission oversight and agency input, and to allow developers to generate electricity while testing. This process will be available for projects that are: (1) Small (5 MW or less), (2) removable or able to shut down on relatively short notice, (3) not located in waters with sensitive designations; and (4) for the purpose of testing new hydro technologies or determining appropriate sites.

Staff envision the license having the following characteristics:

- A short license term (5 years);
- A standard license condition requiring project alteration or shutdown in the event that monitoring reveals an unacceptable level of environmental effect;
- The option of applying for a 30–50 year license at the end of the license term; and
- A standard license condition requiring decommissioning and site restoration at the time of license expiration if the option is not exercised.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available to the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

All comments (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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 "e-Filing" link.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to accessibility@ferc.gov or call toll free 866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Additional details regarding the agenda and the pilot project licensing process for this conference are attached to this notice. All conference-related materials will be made available on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx>.

For more information about the conference, please contact Kristen Murphy at 202–502–6236

(*kristen.murphy@ferc.gov*), or Tim Welch at 202-502-8760 (*timothy.welch@ferc.gov*).

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17930 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the-Record Communications; Public Notice

August 31, 2007.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding,

to deliver to the Secretary of the Commission a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the

official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Docket No.	Date received	Presenter or requester
Prohibited		
1. EL07-56-000, EL07-58-000	8-28-07	Craig Glazer.
Exempt		
1. CP07-44-000	8-7-07	Hon. Thad Cochran, Hon. Trent Lott, Hon. Charles "Chip" Pickering.
2. Project No. 460-000	8-13-07	Hon. Norm Dicks.
3. Project No. 2082-000	8-29-07	Rich Bodnar.
4. Project No. 2100-000	8-7-07	Hon. John T. Doolittle.
5. Project No. 2100-000	8-23-07	Gail Williams.
6. Project No. 11291-023	8-14-07	James A. Glass, PhD.
7. Project No. 12796-000	8-13-07	Daniel E. Weaver ¹

¹One of 14 letters filed between August 13, 2007 and August 22, 2007, from the Cities of Clyde, Columbiana, Dover, Wapakoneta, Wadsworth, Celina and Piqua, Ohio; the Villages of Arcanum, Clinton, Edgerton, Eldorado, Milan, Minster, Montpelier, Oak Harbor and Plymouth, Ohio; the Borough of Ellwood City, Pennsylvania and the City of Martinsville, West Virginia.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17922 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MS083107]

Notice Announcing Combined Notice of Gas Rate Filings

August 31, 2007.

Effective August 31, 2007, the Federal Energy Regulatory Commission (FERC or Commission) will issue notices of

natural gas: (1) Rate filings/applications, (2) refund reports, (3) compliance filing and (4) waiver requests (collectively, natural gas filings) using the RP docket number prefix through its Combined Notice of Filings method, already in place for most electric rate filings.

As of this date, the Secretary of the Commission is making the following changes to the filing procedures for natural gas filings:

1. Filers are no longer required to include a draft form of notice or diskette containing that form of notice for any RP-docketed application, compliance filing, refund report, or waiver request.
2. Filers requesting a shortened comment period for the filing must

clearly state such request in the title or heading for the filing. For example:

Re: (Name of Natural Gas Pipeline)
Docket No. RP07-_____
(Title/Description) and Request for shortened comment period

The notices issued under this method for RP dockets will be added to eLibrary and published in the **Federal Register** under the name "Combined Notice of Filings." These notices will list natural gas filings added to eLibrary since publication of the last notice. Each filing will be listed with its identifying details as follows:

Name of Applicant(s)—This item will show the applicant name as it appears on the filing.

Docket Number—This item will contain a hyperlink to the eLibrary docket sheet for the docket number.

Description—This item will contain a brief description of the filing and a hyperlink that will open an image version of the filed document in eLibrary.

Filing Date—This item will show the date on which the document was filed with the Commission.

Accession Number—This item will contain a hyperlink that will open the document “Info” area of eLibrary for the filed document.

Comment Date—This item will indicate the comment deadline for the filing.

The Commission first announced the new “Combined Notice of Filings” during the April 13, 2004 Open Commission Meeting. By this initiative, the Commission seeks to simplify the manner in which the Commission’s staff prepares notices and thereby expedite the public issuance of notices. Consolidating notices in this manner also reduces the cost of publishing the notices in the **Federal Register**.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-17926 Filed 9-11-07; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0038; FRL-8144-9]

Oak Ridge National Laboratory, Managed by UT-Battelle, LLC; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA’s Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Oak Ridge National Laboratory, managed by UT-Battelle, LLC in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Oak Ridge National Laboratory, managed by UT-Battelle, LLC has been awarded multiple contracts to perform work for OPP under an Interagency Agreement (IAG). Access to this information will enable Oak Ridge National Laboratory,

managed by UT-Battelle, LLC to fulfill the obligations of the IAG.

DATES: Oak Ridge National Laboratory, managed by UT-Battelle, LLC will be given access to this information on or before September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0786; e-mail address: croom.felicia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, 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-OPPT-2007-0038. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr. Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>.

II. Contractor Requirements

Under IAG No. DW-89-92253001, the contractor shall perform technical reviews of economical analyses, market plans and economic benefit data provided by developers and manufacturers of new pesticide products. These economic analyses are submitted to EPP OPP as part of the pesticide registration process. Technical reports from registrant include summaries of economic analyses, market plans, economic modeling and

benefit analyses as well as raw data from economic analyses of each pesticide product.

OPP has determined that the IAG described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this IAG. These evaluations may be used in subsequent regulatory decisions under FIFRA. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under section 408 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the IAG with Oak Ridge National Laboratory, managed by UT-Battelle, LLC, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Oak Ridge National Laboratory, managed by UT-Battelle, LLC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Oak Ridge National Laboratory, managed by UT-Battelle, LLC until the requirements in this document have been fully satisfied. Records of information provided to Oak Ridge National Laboratory, managed by UT-Battelle, LLC will be maintained by EPA Project Officers for these contracts. All information supplied to Oak Ridge National Laboratory, managed by UT-Battelle, LLC by EPA for use in connection with these contracts will be returned to EPA Oak Ridge National Laboratory, managed by UT-Battelle, LLC has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: August 31, 2007.

Oscar Morales,

Acting Director, Office of Pesticide Programs.

[FR Doc. E7-17990 Filed 9-11-07; 8:45 am]

[BILLING CODE 6560-50-S]

ENVIRONMENTAL PROTECTION AGENCY**[FRL-8466-8; Docket ID No. EPA-HQ-ORD-2007-0920]****Board of Scientific Counselors, Human Health Risk Assessment Subcommittee Meetings—Fall 2007****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of two meetings of the Board of Scientific Counselors (BOSC) Human Health Risk Assessment Subcommittee.

DATES: The meetings (via teleconference) will be held on: (1) Tuesday, October 2, 2007, from 11 a.m. to 1:30 p.m., and (2) Wednesday, October 31, 2007, from 11 a.m. to 1:30 p.m. All times noted are eastern time. The meetings may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meetings will be accepted up to 1 business day before each meeting.

ADDRESSES: Participation in the conference calls will be by teleconference only—a meeting room will not be used. Members of the public may obtain the call-in number and access code for the call from Joanna Foellmer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2007-0920, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: Send comments by electronic mail (e-mail) to: ORD.Docket@epa.gov, Attention Docket ID No. EPA-HQ-ORD-2007-0920.
- *Fax*: Fax comments to: (202) 566-0224, Attention Docket ID No. EPA-HQ-ORD-2007-0920.
- *Mail*: Send comments by mail to: Board of Scientific Counselors, Human Health Risk Assessment Subcommittee Meetings—Fall 2007 Docket, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. EPA-HQ-ORD-2007-0920.
- *Hand Delivery or Courier*: Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW,

Washington, DC, Attention Docket ID No. EPA-HQ-ORD-2007-0920. **Note:** This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2007-0920. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the 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 Board of Scientific Counselors, Human Health Risk Assessment Subcommittee Meetings—Fall 2007 Docket, EPA/DC, EPA West, 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 ORD Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via express mail to: Joanna Foellmer, Charles Glover Building, 808 17th Street, NW, 4th Floor, Washington, DC 20006; via regular mail to: Joanna Foellmer, Mail Code 8601D, Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; via phone/voice mail at: (202) 564-3208; via fax at: (202) 565-0061; or via e-mail at: foellmer.joanna@epa.gov.

SUPPLEMENTARY INFORMATION:**General Information**

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at either meeting may contact Joanna Foellmer, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meetings include, but are not limited to:

October 2 Telecon: Objective of the program review; background on the U.S. EPA's Office of Research and Development; charge questions; overview of the human health risk assessment program and multi-year plan; writing assignments; and planning for the second conference call and face-to-face meeting.

October 31 Telecon: Overview of the human health risk assessment program's long-term goals; draft report outline; and preparation for the face-to-face meeting. The meetings are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Joanna Foellmer on (202) 564-3208 or foellmer.joanna@epa.gov. To request accommodation of a disability, please contact Joanna Foellmer, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 5, 2007.

Eric Weber,

Acting Director, Office of Science Policy.

[FR Doc. E7-17997 Filed 9-11-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2004-0109; FRL-8146-3]

Draft List of Initial Pesticide Active Ingredients and Pesticide Inerts to be Considered for Screening under the Federal Food, Drug, and Cosmetic Act; Extension of Comment Period**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice; extension of comment period.

SUMMARY: EPA issued a notice in the *Federal Register* of June 18, 2007, concerning the draft list of the first group of chemicals that will be screened in the Agency's Endocrine Disruptor Screening Program (EDSP). The draft list was produced using the approach described in the September 2005 notice, and includes chemicals that the Agency, in its discretion, has decided should be tested first, based upon exposure potential. This document is extending the comment period for 60 days, from September 17, 2007, to November 16, 2007.

DATES: Comments, identified by docket identification (ID) number EPA-HQ-OPPT-2004-0109 must be received on or before November 16, 2007.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the *Federal Register* document of June 18, 2007.

FOR FURTHER INFORMATION CONTACT: Linda Phillips, Office of Science Coordination and Policy (7203M), Office of Prevention, Pesticides, and Toxic Substances, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-1264; e-mail address: Phillips.linda@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

The Agency included in the June 18, 2007 notice a list of those who may be potentially affected by this action. If you have 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?

When preparing comments follow the procedures and suggestions given in Unit I.B. of the **SUPPLEMENTARY INFORMATION** of the June 18, 2007 *Federal Register* notice.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the public docket, please follow the detailed instructions as provided in Unit I.B.3. of the **SUPPLEMENTARY INFORMATION** of the June 18, 2007 *Federal Register* notice. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action Is EPA Taking?

This document extends the public comment period established in the *Federal Register* of June 18, 2007 (72 FR 33486) (FRL-8129-3). In that document, EPA announced the draft list of the first group of chemicals that will be screened in the Agency's EDSP. The draft list was developed using the approach described in the *Federal Register* notice of September 27, 2005 (70 FR 56449) (FRL-7716-9). As required by the Federal Food, Drug, and Cosmetic Act (FFDCA), all pesticides must eventually be screened under the EDSP, and this first group is simply a starting point. Because EPA developed this draft list of chemicals based upon exposure potential, it should not be construed as a list of known or likely endocrine disruptors, and it would be inappropriate to do so. Following consideration of comments on this draft list of chemicals, EPA will issue a second *Federal Register* notice containing the final list of chemicals. EPA is hereby extending the comment period, which was set to end on September 17, 2007, to November 16, 2007.

III. What Is the Agency's Authority for Taking this Action?

Section 408(p) of FFDCA requires EPA to "develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as [EPA] may designate." (21 U.S.C. 346a(p)). The statute generally requires EPA to "provide for the testing of all pesticide chemicals." (21 U.S.C. 346a(p)(3)). However, EPA is authorized to exempt a chemical, by order upon a determination that "the substance is anticipated not to produce any effect in humans similar to an effect produced by a naturally occurring estrogen." (21 U.S.C. 346a(p)(4)). "Pesticide chemical" is defined as "any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active

and inert ingredients of such pesticide." (21 U.S.C. 321(q)(1)).

List of Subjects

Environmental protection, Chemicals, Endocrine Disruptors, Pesticides

Dated: September 4, 2007.

James B. Gulliford,*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E7-17984 Filed 9-11-07; 8:45 am]

BILLING CODE 6560-50-S**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-2004-0292; FRL-8144-4]

Pyraclostrobin; Order Denying Objections to Issuance of Tolerances**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Order.

SUMMARY: The Natural Resource Defense Council ("NRDC") filed objections with EPA to a final rule under section 408 of the Federal Food, Drug, and Cosmetic Act ("FFDCA"), (21 U.S.C. 346a), establishing tolerances for the pesticide pyraclostrobin on various food commodities. NRDC argues that EPA has unlawfully removed the additional safety factor for the protection of infants and children required by Food Quality Protection Act of 1996. This order denies the objections for the reasons stated herein.

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

SUPPLEMENTARY INFORMATION:**Response to NRDC Objections**

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I. General Information

A. Does This Action Apply to Me?

In this document EPA denies objections to a tolerance actions filed by the Natural Resources Defense Council ("NRDC"). This action may also be of interest to agricultural producers, food manufacturers, or other pesticide manufacturers. Potentially affected

categories and entities may include, but are not limited to:

- Crop Production (NAICS code 111).
- Animal Production (NAICS code 112).
- Food Manufacturing (NAICS code 311).
- Pesticide Manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities who may be interested in today's action.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

An electronic copy of this **Federal Register** document and all other documents included in the rulemaking docket for this action may be accessed through the EPA's electronic docket. EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2004-0292. 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](http://www.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](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, 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. You may also access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr>.

II. Introduction

A. What Action Is the Agency Taking?

On June 5, 2006, the Natural Resource Defense Council ("NRDC") filed objections with EPA to a final rule under section 408 of the Federal Food,

and Cosmetic Act ("FFDCA"), (21 U.S.C. 346a), establishing tolerances for the pesticide pyraclostrobin on various food commodities. (Ref. 1). NRDC makes two main claims in its objections: (1) that EPA has unlawfully removed the additional safety factor for the protection of infants and children; and (2) that EPA's decision to promulgate the tolerances was arbitrary and capricious because EPA made its decision in the absence of data that EPA had determined were necessary to evaluate pyraclostrobin's safety. NRDC did not exercise the option provided in section 408(g)(2) to request a hearing on its objections. This Order responds to those objections.

EPA published notice of the objections in the **Federal Register**, (71 FR 41015 (July 19, 2006)), and held a 60-day public comment period.

The body of this document contains the following sections. First, there is a background section which explains the applicable statutory and regulatory provisions, EPA risk assessment practices, and the relevant EPA science policy documents. Second, EPA describes the objected-to tolerance action. Third, there is a section setting forth in greater detail the substance of the objections. Fourth, a summary of the public comment is presented. Finally, EPA's announces its response to the objections.

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

The procedure for filing objections to tolerance actions and EPA's authority for acting on such objections is contained in section 408(g) of the FFDCA and regulations at 40 CFR Part 178. (21 U.S.C. 346a(g)).

III. Statutory and Regulatory Background

A. Statutory Background

EPA establishes maximum residue limits, or "tolerances," for pesticide residues in food under section 408 of the FFDCA. (21 U.S.C. 346a). Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. (21 U.S.C. 331, 342). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration ("FDA") and the U. S. Department of Agriculture ("USDA").

A pesticide tolerance may only be promulgated by EPA if the tolerance is "safe." (21 U.S.C. 346a(b)(2)(A)(i)). "Safe" is defined by the statute to mean

that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." (21 U.S.C. 346a(b)(2)(A)(ii)). Section 408 directs EPA, in making a safety determination, to "consider, among other relevant factors— . . . available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposure from other non-occupational sources." (21 U.S.C. 346a(b)(2)(D)(vi)). Other provisions address in greater detail exposure considerations involving "anticipated and actual residue levels" and "percent of crop actually treated." (See 21 U.S.C. 346a(b)(2)(E) and (F)). Section 408(b)(2)(C) requires EPA to give special consideration to risks posed to infants and children. This provision directs that "an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children." (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to "use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children." (Id.) [The additional safety margin for infants and children is referred to throughout this notice as the "children's safety factor."] These provisions establishing the detailed safety standard for pesticides were added to section 408 by the Food Quality Protection Act of 1996 ("FQPA"), an act that substantially rewrote this section of the statute.

Tolerances are established by rulemaking under the unique procedural framework set forth in the FFDCA. Generally, the rulemaking is initiated by the party seeking the tolerance by means of filing a petition with EPA. (See 21 U.S.C. 346a(d)(1)). EPA publishes in the **Federal Register** a notice of the petition filing along with a summary of the petition, prepared by the petitioner. (21 U.S.C. 346a(d)(3)). After reviewing the petition, and any comments received on it, EPA may issue a final rule establishing the tolerance, issue a proposed rule, or deny the

petition. (21 U.S.C. 346a(d)(4)). Once EPA takes final action on the petition by either establishing the tolerance or denying the petition, any affected party has 60 days to file objections with EPA and seek an evidentiary hearing on those objections. (21 U.S.C. 346a(g)(2)). Objections must state with "particularity" their basis. (40 C.F.R. 178.25(a)(2)). EPA's final order on the objections is subject to judicial review. (21 U.S.C. 346a(h)(1)).

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

B. Setting Tolerances Under the FFDCA

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

2. *Choosing a tolerance value.* In the first step of the tolerance setting process (choosing a tolerance value), EPA evaluates data from experimental crop field trials in which the pesticide has been used in a manner, consistent with the draft FIFRA label, that is likely to produce the highest residue in the crop in question (e.g., maximum application rate, maximum number of applications, minimum pre-harvest interval between

last pesticide application and harvest). (Refs. 2 and 3). These crop field trials are generally conducted in several fields at several geographical locations. (Ref. 3 at 5, 7 and Tables 1 and 5). Several samples are then gathered from each field and analyzed. (Id. at 53). Generally, the results from such field trials show that the residue levels for a given pesticide use will vary from as low as non-detectable to measurable values in the parts per million ("ppm") range with the majority of the values falling at the lower part of the range. EPA uses a statistical procedure to analyze the field trial results and identify the upper bound of expected residue values. This upper bound value is used as the tolerance value. (Ref. 4). (As discussed below, the safety of the tolerance value chosen is separately evaluated.)

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

overtolerance residue is indicative of use of a pesticide at levels, or in a manner, not permitted on the label.

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

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

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

a. *Levels of concern and risk assessment*—i. *Threshold effects.* In assessing the risk from a pesticide's threshold effects, EPA evaluates an array of toxicological studies on the

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

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

In implementing FFDCA section 408, EPA's Office of Pesticide Programs, also calculates a variant of the RfD referred to as a Population Adjusted Dose ("PAD"). A PAD is the RfD divided by any portion of the FQPA children's safety factor that does not correspond to one of the traditional additional safety factors used in general Agency risk assessment. (Ref. 5 at 13–16). The reason for calculating PADs is so that other parts of the Agency, which are not governed by FFDCA section 408, can, when evaluating the same or similar substances, easily identify which aspects of a pesticide risk assessment are a function of the particular statutory commands in FFDCA section 408.

Today, RfDs and PADs are generally calculated for both acute and chronic dietary risks although traditionally a RfD or PAD was only calculated for chronic dietary risks. Throughout this

document general references to EPA's calculated safe dose are denoted as a RfD/PAD.

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

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

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

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

the children's safety factor is only applicable to threshold risks, no further discussion of non-threshold risk assessment is included here.

b. Estimating human exposure.

Equally important to the risk assessment process as identifying hazards and determining the toxicological level of concern is estimating human exposure. Under FFDCA section 408, EPA is concerned not only with exposure to pesticide residues in food but also exposure resulting from pesticide contamination of drinking water supplies and from use of pesticides in the home or other non-occupational settings. (See 21 U.S.C.

346a(b)(2)(D)(vi)). There are two critical variables in estimating exposure in food: (1) The types and amount of food that is consumed; and (2) the residue levels in those foods. Consumption is estimated by EPA based on scientific surveys of individuals' food consumption in the United States conducted by the U.S. Department of Agriculture. (Ref. 2 at 12). Information on residue levels comes from a range of sources including crop field trials, data on pesticide reduction due to processing and other practices, information on the extent of usage of the pesticide, and monitoring of the food supply. (Id. at 17).

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

(71 FR 43906, 43909–43910 (August 2, 2006)).

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

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

C. Children's Safety Factor Policy

As part of implementation of the major changes to FFDCA section 408 included in the FQPA, EPA has issued a number of policy guidance documents addressing critical science issues. On January 31, 2002, EPA released its science policy guidance on the children's safety factor. (Ref. 5) [This policy is hereinafter referred to as the

"Children's Safety Factor Policy"]. The Children's Safety Factor Policy emphasizes throughout that EPA interprets the children's safety factor provision as establishing a presumption in favor of application of an additional 10X safety factor for the protection of infants and children. (Id. at 4, 11, 47, A-6). Further, the policy notes that the children's safety factor provision permits a different safety factor to be substituted for this default 10X factor only if reliable data are available to show that the different factor will protect the safety of infants and children. (Id.). Given the wealth of data available on pesticides, however, the policy indicates a preference for making an individualized determination of a protective safety factor if possible. (Id. at 11). The policy states that use of the default factor could under- or over-protect infants and children due to the wide variety of issues addressed by the children's safety factor. (Id.). Further, the policy notes that "[i]ndividual assessments may result in the use of additional factors greater or less than, or equal to 10X, or no additional factor at all." (Id.).

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

based upon a review of existing information, not simply because a data requirement has been levied to expand OPP's general knowledge." (Ref. 5 at 23).

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

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

IV. The Challenged Tolerance Decision

On April 5, 2006, EPA promulgated a final rule establishing tolerances for the fungicide pyraclostrobin on shelled succulent beans; foliage in the legume crop group; mangoes; and papayas. (71 FR 17014 (April 5, 2006)). Pyraclostrobin is a synthetic analog of a natural antifungal substance which inhibits spore germination, mycelial growth, and sporulation of the fungus on the leaf surface. (Ref. 8 at 4). The tolerances were requested in petitions from the pyraclostrobin registrant, BASF Corporation, and the Interregional Research Project Number 4 ("IR-4"). The IR-4 is a program sponsored by the U.S. Department of Agriculture and land

grant universities and directed toward obtaining regulatory approval for pesticide uses on minor and speciality food crops that are not likely to be supported by private sector companies. EPA evaluated the petitions in a joint effort with the Pest Management Regulatory Agency of Canada.

Given pyraclostrobin's exposure pattern and toxicological characteristics, EPA determined that pyraclostrobin potentially presented acute, chronic, short-term, and cancer risks and EPA quantitatively assessed these risks in making its safety determination. (71 FR at 17018–17019; 69 FR 63083, 93093–63095 (October 29, 2004); Ref. 8 at 31–32). All of these risks were found to be below the Agency's level of concern. (Id.). EPA concluded that there were reliable data supporting its determination that the additional children's safety factor was not needed to protect the safety of children. In making this determination EPA considered the completeness of the toxicity and exposure database and data bearing on pre- and post-natal toxicity. (71 FR at 17018; 69 FR 63092–63093). EPA found that there was adequate toxicity and exposure data. Although there was some evidence of qualitative and quantitative increased sensitivity in the young from the developmental study in rabbits and reproduction study in rats, respectively, EPA concluded using a weight-of-the-evidence test that residual concerns for increased sensitivity in the young were low. (69 FR at 63093); (Ref. 9 at 8).

V. NRDC Objections

In its objections, NRDC cites various allegedly inadequate studies and pre-natal toxic effects of pyraclostrobin as grounds for claiming it was unlawful for EPA to remove the children's safety factor and EPA's overall decision was arbitrary and capricious.

A. Children's Safety Factor

NRDC argues that EPA should have retained the children's safety factor for two separate reasons: (1) pyraclostrobin demonstrated pre-natal toxicity; and (2) there were inadequacies in the submitted toxicity data on pyraclostrobin and additional toxicity and exposure data are needed. NRDC claims that EPA's decision to remove the children's safety factor violates the FFDCA; however, NRDC does not allege that retention of the children's safety factor would result in the pyraclostrobin tolerances exceeding the FFDCA section 408 safety standard. NRDC expanded on its objections in comments it submitted on its own objections. These comments principally argued that EPA had

wrongly interpreted the children's safety factor provision. (Ref. 10).

1. *Legal requirements for imposing the children's safety factor and the standard for choosing a different safety factor.* NRDC describes the children's safety factor provision as requiring that the additional children's safety factor "shall be applied" to "take into account" (1) "potential pre- and post-natal toxicity;" (2) "completeness" of toxicity data; and (3) "completeness" of the exposure data. With regard to the reference to pre- and post-natal toxicity, NRDC argues that this statutory language "mandates application of the safety factor to account for any potential for pre- or post-natal toxicity." (Ref. 10 at 2). As to completeness of the data, NRDC takes a similarly rigid position: "Where studies identified by EPA as necessary to ensure safety have never been conducted or reviewed – or have been determined to be inadequate – EPA by definition cannot find that there is a 'reasonable certainty' that 'no harm will result' to children, as required by law[.]" and therefore, cannot modify the children's safety factor. (Id.).

NRDC acknowledges that EPA may apply a factor different than presumptive tenfold children's safety factor but stresses that a different factor may be applied only if there is reliable data showing the different factor is safe. EPA, NRDC claims, has applied a different standard in the pyraclostrobin tolerance decision – requiring that there be merely adequate data on pyraclostrobin toxicity and exposure and that there be no substantial evidence of increased sensitivity of infants and children to the pesticide. (Id.).

2. *Pre-natal sensitivity.* In discussing evidence on pre-natal sensitivity, NRDC references both the developmental studies in rats and in rabbits. NRDC asserts that the developmental rat study shows qualitative increased sensitivity in the rat fetuses because the effects in the rat fetuses (dilated renal pelvis and cervical ribs with no cartilage) were more severe than the effects in adults (reduced body weight, body weight gain, food intake, and food efficiency). (Ref. 1 at 7). Qualitative increased sensitivity is seen in the rabbit developmental study, according to NRDC, again because the effects in the fetuses were more severe than the effects in the adults (increased resorption and post-implantation loss versus reduced body weight, body weight gain, food intake, and food efficiency). (Id.). NRDC argues that EPA erred by looking beyond the question of whether the animal studies show fetuses to be qualitatively more sensitive than

maternal animals to examine whether it was safe to remove or reduce the factor despite a finding of qualitative increased sensitivity. According to NRDC, because the studies show qualitative increased sensitivity in prenatal animals as compared to adult animals, "EPA must retain the full tenfold safety factor . . ." (Id. at 5).

3. *Inadequate and missing data*—a. *Immunotoxicity data.* NRDC argues that, because EPA has not required immunotoxicity data on pyraclostrobin, EPA cannot explain the differential immunotoxic results between males and females in the pyraclostrobin studies. Due to this lack of understanding, NRDC claims that immunotoxicity "should be considered a serious potential risk of pyraclostrobin . . . [and] EPA must retain the full tenfold safety factor as a result." (Id. at 6–7). NRDC cites four studies in support of this argument. First, it references a 90-day oral toxicity mouse study in which females allegedly showed immunotoxic effects at a dose at which males only showed more generalized toxicity (e.g., reduced body weight). Second, NRDC points to a 90-day oral toxicity study in dogs in which NRDC claims females suffered body weight loss, reduced food intake, and reduced food efficiency in addition to the gastrointestinal effects that occurred in both sexes. Third, NRDC cites two neurotoxicity studies in which males were shown to be significantly more sensitive than females. NRDC claims that these studies demonstrate that males and females respond differently to pyraclostrobin and that EPA should be particularly concerned about the immunotoxic effects in females because there is "substantial data demonstrating that females are more likely than males to develop autoimmune diseases in response to environmental stressors." (Id. at 6).

b. *Two-generation reproduction study.* NRDC asserts that the two-generation rat reproduction study with pyraclostrobin relied upon by EPA is "invalid" and that EPA cannot rehabilitate it by combining it with a one-generation rat reproduction study because that study produced results which contradict the two-generation study. (Id. at 7–8). The two-generation study is invalid, according to NRDC, because it showed no adverse effects at any of the doses tested. NRDC states that such a study "must be considered invalid because it is unknown whether the study failed to find an effect because there really was no effect, or if it was due to a lack of statistical power, poor study design, or an endless number of potential fatal weaknesses (e.g., the test agent could have degraded through poor storage

conditions; the endpoint measurements could have been reported in error; treated and control animals could have been mis-categorized, etc.)." (Id. at 8). NRDC argues that the one-generation study contradicts the two-generation study because the former identified adverse effects at a dose lower than a dose in the two-generation study that showed no effects. NRDC concludes that "EPA must retain the full tenfold safety factor in light of these invalid and deficient studies." (Id.)

c. *Other data deficiencies.* NRDC briefly mentions several other alleged data gaps or deficiencies: (1) data on anticipated pyraclostrobin residues which EPA has required to be submitted; (2) a missing 28-day inhalation toxicity study; (3) a deficient chronic toxicity study in rats due to failure to show adverse effects; (4) a deficient mouse cancer study due to failure to show adverse effects; and (5) an unacceptable dermal penetration study due to problems in administration of the test dose. Categorizing these deficiencies as "significant," NRDC argues EPA must retain the children's safety factor to address them. (Id. at 8–10).

B. *Arbitrary and Capricious*

NRDC also argues that the tolerance decision was arbitrary and capricious "because EPA never received or reviewed information that the agency considered necessary to review the pesticides' safety (listed above), and because EPA failed to explain adequately its departure from the required children's safety factor." (Id. at 10).

VI. Public Comment

A. *In General*

On July 19, 2006, EPA published a notice in the **Federal Register** calling attention to and requesting comments on the NRDC Objections. (71 FR 41015 (July 19, 2006)). The notice included a short summary of the objections and referenced readers to EPA's electronic docket for a full copy of the objections. EPA received three comments on the objections. Other than NRDC's comments on its own objections, the only significant comment EPA received was from BASF Corporation, the registrant under FIFRA for pyraclostrobin.

B. *BASF Corporation*

BASF Corporation has registered pyraclostrobin for use as a pesticide under FIFRA and petitioned for several of the tolerances that are subject to the present objections. As to the potential

for pyraclostrobin to impact differently on males and females, BASF argues in its comments that differential effects on the sexes are noted in toxicology studies and taken into account in setting the RfD. (Ref. 11). Any uncertainty regarding the sensitivities of these two groups is addressed, according to BASF, by the tenfold uncertainty factor used to account for variable sensitivities in humans. Further, BASF argues that the "issue of differential sensitivity between sexes is not relevant for evaluating the need to apply the FQPA safety factor" because that safety factor only addresses potential differences in sensitivities between adults and children. (Id. at 1).

BASF challenges NRDC's assertion that qualitative sensitivity was demonstrated in the rat and rabbit developmental studies. BASF claims that the fetal effects seen in the rat study (dilated renal pelvis and cervical ribs with no cartilage) were not due to treatment. This is evidenced, according to BASF, by the fact that the incidence of these effects was within the historical control range for the experimental animal. As to the effects on rabbit fetuses (increased resorption and post-implantation loss), BASF argues these effects are a result of the severe effects that pyraclostrobin had on the maternal animals as opposed to any direct toxic effect on the fetuses. According to BASF, "maternal body weight gain during the treatment period was reduced by a dramatic 77% at the high dose and 39% at the mid dose compared to controls. This substantial effect to the maternal animals would be expected to affect the dam's ability to deliver full-term fetuses and does not reflect a direct action of the test material on the fetus." (Id. at 2).

With regard to the two-generation reproduction study in rats, BASF contends that the results from this study are not inconsistent with the one-generation reproduction study. BASF claims that body weight changes were seen in the highest dose tested in the two-generation reproduction study. Although the body weight changes in the two-generation study were small, BASF argues that "the effects at this dose fits along a dose-response curve with the two doses in the range-finding [one-generation] study." (Id. at 3).

BASF disputes NRDC's claims regarding data gaps and deficiencies. First, BASF asserts that a 28-day inhalation study has been submitted to EPA. Second, BASF contends that subsequent data submitted to EPA led EPA to conclude that the rat and mouse carcinogenicity studies were conducted at sufficiently high doses. Finally, BASF

states that a repeat dermal penetration study was conducted. (Id. at 4).

C. NRDC

In its comments, NRDC expands on its legal argument that EPA must retain the children's safety factor when data are absent. According to NRDC, when data EPA has determined are "necessary to evaluate safety" are not available, EPA "by definition" may not remove the 10X children's safety factor. (Ref. 10 at 2). NRDC also cites general statements that children can be more vulnerable than adults to pesticides and that children may have greater relative exposure to pesticides than adults and argues that this means that the children's safety factor must be retained for pyraclostrobin. (Id. at 3). Finally, NRDC listed various documents that it claims support its objections. (Id. at 4).

VII. Response to Objections

As summarized above, NRDC's objections pertain primarily to EPA's decision on the children's safety factor – in brief, NRDC's argument is that, due to evidence on pre-natal toxicity and immunotoxicity, and data deficiencies, EPA erred in removing the children's safety factor. NRDC also recasts these same allegations to claim that EPA acted arbitrarily and capriciously in promulgating the pyraclostrobin tolerances. These arguments are addressed separately below.

A. Children's Safety Factor

NRDC objects to the pyraclostrobin tolerances on the ground that it was unlawful for EPA to remove the children's safety factor. Although not stated, presumably NRDC believes that EPA should have denied the petition seeking the pyraclostrobin tolerances for this reason. A decision on the children's safety factor, however, is not outcome determinative with regard to whether a petitioned-for tolerance meets the safety standard for establishing tolerances. Retention of the children's safety standard would generally result in a tenfold lowering of the pesticide's RfD/PAD, thus decreasing by a factor of ten the amount of aggregate exposure to the pesticide that would not exceed the RfD/PAD; it would not, however, bar the establishment of the tolerance. EPA has established many tolerances for which the children's safety factor has been retained. (See, e.g., 71 FR 56369, 56372 (September 27, 2006); 70 FR 14535, 14541–14542 (March 23, 2005)). Similarly, EPA has recently denied a petition to revoke tolerances which claimed that EPA should have retained the children's safety factor where it was clear that EPA could make the

reasonable certainty of no harm finding with or without retention of the additional safety factor. (72 FR 39318, 39323–39324 (July 18, 2007)). For pyraclostrobin, EPA's exposure assessment, which is partially refined, suggests that retention of the children's safety factor may raise safety concerns for the pesticide. Because it is unclear whether further refinement of the exposure assessment would render the decision on the children's safety factor irrelevant to the ultimate safety decision, EPA has chosen to address the merits of the argument presented by NRDC.

NRDC makes two different types of arguments as to why the children's safety factor should be retained. First, citing various issues regarding pre-natal toxicity and data completeness, NRDC essentially argues that the overall weight-of-evidence does not support EPA's conclusion that there is reliable data showing it will be safe for children to use a hundredfold margin of safety rather than a thousand-fold margin. Second, NRDC argues that each of the individual issues it raises "compel" EPA to retain the children's safety factor. This second argument is more fully made in the legal contentions presented in NRDC's comments on its objections.

In responding to NRDC's arguments, EPA first addresses the legal contention that various findings "compel" the retention of the children's safety factor. In this section, EPA explains why it fundamentally disagrees with NRDC's approach to the safety factor provision. Second, EPA examines the merits of the various factual allegations made by NRDC concerning pre-natal toxicity and data deficiencies. As EPA makes clear below, in most instances NRDC is mistaken in its factual allegations. Finally, EPA addresses whether the totality of the claims raised by NRDC alter EPA's conclusion regarding removal of the children's safety factor.

1. *Legal interpretation of the children's safety factor provision.* In its objections and its comments on its objections, NRDC claims that (1) EPA is legally compelled to retain the children's safety factor when there is a data gap; (2) EPA is legally compelled to retain the children's safety factor when there is evidence showing that the young are more sensitive to the effects of a pesticide or a pesticide causes pre- or post-natal toxicity; and (3) EPA has applied an incorrect standard in evaluating whether the presumptive tenfold children's safety factor may be modified. Following a summary of the statutory language on the children's

safety provision, EPA explains why each of these assertions are incorrect.

a. *Children's safety factor provision.* The statutory requirements pertaining to the children's safety factor are contained in two sentences in section 408(b)(2)(C). The first sentence commands that as to "threshold effects, for the purposes of [making the reasonable certainty of no harm finding], an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children." (21 U.S.C. 346a(b)(2)(C)). This sentence also explains that the purpose for this additional safety factor is "to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children." (Id.). Switching course, the second sentence then countermands the mandatory language in the first sentence ("shall be applied") and makes clear that EPA has the authority to deviate from the requirement to apply an additional 10X safety factor. The second sentence reads "[n]otwithstanding such requirement for an additional margin of safety, the Administrator may use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such a margin will be safe for children." (Id.).

b. *Operation of the children's safety factor provision.* EPA has interpreted the children's safety factor provision as containing a presumption in favor of retaining an additional tenfold safety factor for the protection of infants and children. That presumption may be overcome, however, when EPA has reliable data showing that use of a different safety factor will protect the safety of infants and children. Such a different safety factor may be lower or higher than the default 10X value. In making decisions about whether it has reliable data supporting a different safety factor, EPA has looked at the totality of the evidence bearing on the safety of infants and children and carefully weighed the strength of that evidence in determining whether a different safety factor would be safe. That was the approach followed with pyraclostrobin.

NRDC appears to interpret the children's safety factor provision quite differently. Repeatedly in its objections, NRDC argues that EPA "must" retain the children's safety factor due to some data deficiency or because of the identification of increased sensitivity in the young. NRDC affirms this view in its comments stating that the statute "mandates application of the safety factor to account for any potential for pre- or post-natal toxicity" and, that

where necessary studies are missing, "EPA, by definition" cannot make the safety finding needed to choose a different safety factor. Under NRDC's interpretation, the children's safety factor operates in a rigid and automatic fashion: upon identification of a data gap or of sensitivity in the young, EPA loses all discretion to choose a different safety factor.

i. *Data gaps.* EPA has previously rejected NRDC's interpretation as it applies to data gaps noting that the interpretation fails to take into account the entire children's safety factor provision. In responding to other tolerance objections filed by NRDC, EPA stated its disagreement with the view "that the mere absence of a required [developmental neurotoxicity] study should, by itself, conclusively bar EPA from applying a different additional safety factor than the 10X default value." (70 FR at 46723). EPA pointed out that the statute "expressly authorizes" EPA to choose a different safety factor based solely on whether EPA determined that a different factor was safe and that EPA's policy of making children's safety factor decisions on a case-by-case basis examination of all of the data on a pesticide is in accord with this statutory provision. (Id.). EPA concluded that NRDC's outcome-determinative approach to data gaps and the children's safety factor simply did not address the statute's grant of discretion to EPA to choose a different safety factor.

In its comments on its objections, NRDC now offers the following argument as to why, when data on pesticide safety are lacking, EPA does not have the authority to choose a different safety factor. NRDC claims that, when needed safety data are missing, EPA, "by definition," cannot make the reasonable certainty of no harm (i.e. safety) finding necessary to choose a different safety factor. NRDC's logic seems to be as follows: if EPA determines it needs additional data on safety, EPA has necessarily concluded that such data are "necessary to ensure safety," and if data that are "necessary to ensure safety" are lacking, EPA cannot make the safety finding required to apply a different children's safety factor.

The main problem with this argument is that it ignores the plain language of the statute. As noted above, section 408(b)(2)(C) contains two sentences regarding application of an additional safety factor for the protection of infants and children. The first sentence requires EPA to apply an additional 10X safety factor to address, among other things, data completeness issues. Importantly,

the data completeness issue mentioned by the statute is data bearing on toxicity and exposure – i.e., data on safety. In the very next sentence, however, the statute provides that "notwithstanding such requirement" to apply a safety factor to address safety data completeness issues, EPA may choose a different factor so long as that factor is safe for children. If there is any definitional reading of this language, it is that EPA has the authority to choose a different safety factor when safety data are incomplete. NRDC's interpretation would read EPA's grant of authority to choose a different factor when there are safety data completeness issues out of the statute.

In addition to ignoring the plain language of the children's safety provision, NRDC's argument also is inconsistent with the statutory structure in at least two ways. First, NRDC's interpretation renders the children's safety factor provision, itself, mere surplusage if data completeness issues arise. If, as NRDC has argued, a request for data means that the data are necessary to ensure safety, then EPA, in those circumstances, not only cannot make the safety (reasonable certainty of no harm) finding necessary to remove the children's safety factor but EPA cannot make the safety (reasonable certainty of no harm) finding necessary to grant the tolerance. In other words, under NRDC's argument, the entire children's safety provision becomes irrelevant if EPA has requested data, because that request, by itself, conclusively bars EPA from establishing the tolerance. NRDC has not explained why it is rational to assume that Congress drafted a provision addressing data completeness issues but made the provision inoperative if data completeness issues arise.

Second, NRDC's elevation of an EPA requirement for additional safety data to a determination that a tolerance is unsafe (i.e. that a safety determination cannot be made) is inconsistent with the structure of section 408 that permits EPA to require additional safety data on existing tolerances while at the same time commanding that tolerances that do not meet the safety standard be revoked. Under section 408(f), EPA is authorized to require the submission of data "to support the continuation of a tolerance . . ." (21 U.S.C. 346a(f)). The sole criterion for the continuation of a tolerance is whether it continues to meet the reasonable certainty of no harm standard. (21 U.S.C. 346a(b)(2)(A)(i)). Thus, Congress contemplated that EPA could require safety data on existing tolerances. Yet, under NRDC's interpretation it is

difficult to see how EPA could ever require submission of safety data on existing tolerances. NRDC has argued that if data bearing on the reasonable certainty of no harm finding are needed (which is the finding necessary to request data under section 408(f)), then the reasonable certainty of no harm finding cannot be made. Thus, if EPA were to determine that additional safety data are needed on an existing tolerance, it would also be concluding that that tolerance is unsafe. The statute, however, commands EPA to revoke unsafe tolerances, not request more safety data concerning them. (21 U.S.C. 346a(b)(a)(2)(A)(ii)). In other words, under NRDC's approach, if EPA determines that data were needed to support the continuation of a tolerance, EPA would have to revoke the tolerance rendering moot any decision to require submission of additional data to support the tolerance. Presumably, Congress would not have enacted such a self-defeating provision.

The underlying flaw in NRDC's argument is that it equates an EPA decision to seek additional safety data with the proposition that EPA has necessarily determined that a safety finding cannot be made in the absence of such data. NRDC does not take into account that there are many types of safety data and that the varying types of safety data have varying degrees of importance to the ultimate reasonable certainty of no harm finding. For example, the five core required toxicology studies would generally be of greater importance to the children safety factor determination than conditionally-required toxicology studies or special studies, for instance, to determine mechanism of toxicity. Similarly, as to pesticide exposure data, residue data on major crops will be of more significance than data on minor crops, and even for major crops the importance of the first 15 geographically-distributed residue studies will be of more value than the next five such studies. Further, not only are some studies more important or necessary to the safety determination than others, but, in the absence of a study, information from one study, or a group of studies, or the assumptions made to compensate for the missing study, may significantly diminish any uncertainty raised by the study's absence. For example, in the absence of dermal absorption data, EPA generally assumes 100 percent of a pesticide is dermally absorbed. Given all of these considerations and the range of data that can be required, it is apparent that a request for additional data is not synonymous with a determination that

a safety finding cannot be made. Thus, it is reasonable not to adopt NRDC's absolutist approach but to evaluate on a case-by-case basis whether the safety data that are available on a pesticide show that a different safety factor is safe.

At bottom, the decision on the children's safety factor turns on whether a safety finding can be made, not on whether any particular study is available. If data are absent, EPA may still examine the existing reliable data to determine if a factor different than 10X is safe. NRDC is incorrect to the extent it argues that EPA is statutorily barred from making this inquiry.

ii. *Increased sensitivity in the young.* In the current objections, NRDC also argues that EPA "must" retain the children's safety factor because "[j]uveniles are qualitatively more sensitive than adults to pyraclostrobin toxicity." (Ref. 1 at 7). NRDC criticizes EPA for examining whether there is "substantial evidence" of sensitivity. (Id. at 5). Presumably, NRDC's view is that any evidence of sensitivity automatically requires EPA to retain the children's safety factor.

This rigid interpretation of the children's safety provision, however, fails for the same reason NRDC's argument for automatic retention of the children's safety factor for data deficiencies fails – it is not in accord with the plain language of the statute. The statute does direct EPA to consider "susceptibility of infants and children" to pesticides. (21 U.S.C. 346a(b)(2)(C)(i)(II)). It also states that an additional safety factor to protect infants and children shall be applied "to take into account potential pre- and post-natal toxicity . . ." (21 U.S.C. 346a(b)(2)(C)). Nonetheless, in clear and unmistakable language, Congress decreed that, "[n]otwithstanding such requirement for an additional margin of safety" to take into account potential pre- and post-natal toxicity, EPA is authorized to choose a different safety factor if EPA has reliable data showing a different factor is safe. (Id.). Interpreting the statute as creating a rigid, per se rule that the identification of sensitivity in the young removes EPA's discretion to choose a different safety factor is inconsistent with this language and the flexibility granted to the Agency. On the other hand, EPA's policy, and the approach it followed with pyraclostrobin, of examining the entire database to determine if, despite a finding of sensitivity, there are reliable data showing a different factor to be safe, is in full accord with the statutory provision.

c. *The standard for choosing a different safety factor.* Alternatively, NRDC argues that even if the statutory language does not compel EPA to retain the children's safety factor whenever there is a data gap or evidence of sensitivity in the young, EPA's interpretation of the standard for choosing a different safety factor "frustrates congressional policy." (Ref. 10 at 2). NRDC asserts that the language EPA offered in summarizing its decision to remove the children's safety factor demonstrates the unlawfulness of EPA's interpretation: "[EPA] has concluded that there are reliable data to support reducing the FQPA SF [safety factor] to 1X for all potential pyraclostrobin exposure scenarios because the toxicity and exposure databases are adequate, there are no residual uncertainties for pre- or postnatal toxicity, and there is no substantial evidence of increased sensitivity of infants and children to pyraclostrobin." (Id.). NRDC claims that "requiring 'substantial evidence' of 'increased sensitivity of infants and children,' along with merely 'adequate' data regarding toxicity and exposure" is not true to the reasonable certainty of no harm standard. (Id.).

NRDC's view here is not well-founded. Contrary to NRDC's argument, EPA does not apply the reasonable certainty of no harm standard in some sort of formalistic fashion using fixed rules that provide minimal protection to children. Rather, EPA applies the reasonable certainty of no harm standard in the children's safety factor provision, just as it does with the overall reasonable certainty of no harm provision for tolerances, using a comprehensive, weight-of-the-evidence approach that is designed to protect fully the safety of children.

EPA, as well as FDA, has applied a reasonable certainty of no harm standard in administering various provisions of the FFDCA for many years. Since its enactment in 1958, the "safety" standard in FFDCA section 409 has been interpreted by FDA as imposing a reasonable certainty of no harm standard. (21 C.F.R. 170.3(i)). EPA was governed by this standard in implementing section 409 as to pesticides in processed foods for the period between 1970 and 1996. In 1996, when Congress enacted the FQPA, the reasonable certainty of no harm safety standard was codified in section 408. (7 U.S.C. 346a(b)(2)(A)(ii)). In brief, EPA has applied that standard using a complex risk assessment process which involves careful weighing of scientific evidence at each step along the way. (62 FR 62961, 62962–62963 (November 26, 1997)). First, a thorough evaluation of

hazard and exposure data is conducted to determine the adequacy of that data to address the potential risks posed by a pesticide and the significance of any data gaps that are identified. Hazard data are examined using a weight-of-the-evidence approach for the purpose of identifying a safe dose for humans. Derivation of a safe dose generally requires use of safety factors to address any uncertainties in knowledge. Exposure data are carefully weighed in estimating potential human exposure. Finally, human exposure estimates are compared to the safe dose to determine if there is a reason for concern. (Ref. 2; 5; and 6).

A similar, if slightly more narrowly focused, inquiry is involved in determining if there are reliable data showing that a safety factor different than the presumptive 10X factor will ensure that there is a reasonable certainty of no harm to children. (Ref. 5 at 8–18; 50–53). This inquiry examines the risks to children guided by the three factors mentioned in the statute – completeness of the toxicity database; completeness of the exposure database; and the potential for pre- and post-natal toxicity. (21 U.S.C. 346a(b)(2)(C)). In other words, EPA focuses on the completeness or adequacy of the databases regarding the hazard a pesticide poses to children and children's potential exposure to that pesticide. This completeness inquiry identifies and evaluates the significance of any data gaps. It also examines evidence bearing on pre- and post-natal toxicity with particular emphasis on whether there is evidence indicating that children may be more sensitive than adults to the toxic effects of a pesticide. (21 U.S.C. 346a(b)(2)(C)(i)(II)). As in the broader reasonable certainty of no harm evaluation, the children's safety factor determination involves an examination of uncertainties and a determination as to whether these uncertainties are addressed by adequate safety factors or other aspects of the risk assessment such as the levels that adverse effects occur in adults. Each step involves a careful weighing of the scientific evidence and a characterization of what the data show. That is precisely what was done with pyraclostrobin – examining the adequacy of the hazard and exposure data; and evaluating the evidence on pre- and post-natal toxicity, the evidence on increased sensitivity in the young, and the degree to which any pre- or post-natal toxicity was addressed by basing safety determinations on effects seen at similar or lower doses in adults. EPA did not apply any rigid tests in

determining if there was reasonable certainty of no harm supporting the removal of the additional safety factor for pyraclostrobin but rather considered all of the relevant data and weighed its significance to the safety of children. This approach is consistent with (1) the statutory language itself – reasonable certainty of no harm; (2) EPA’s historic interpretation and implementation of that language; and (3) protection of infants and children.

The language from the pyraclostrobin decision cited by NRDC (adequate safety data and no substantial evidence of sensitivity) was intended as a summary of EPA’s weight-of-the-evidence evaluation in making its reasonable certainty of no harm finding on the children’s safety factor. Considerations of data adequacy and the substantiality of evidence on harmful effects are a routine part of the weight-of-the-evidence analysis used to make reasonable certainty of no harm determinations. Surely, Congress did not intend to remove EPA’s discretion to choose a different safety factor when data on infants and children are adequate to evaluate safety and evidence of sensitivity in the young is insubstantial.

Accordingly, EPA denies NRDC’s objection to the extent they rely on these flawed interpretations of the statute or a misreading of EPA’s tolerance decision.

2. *Individual factual findings bearing on the children’s safety factor*—a. *Pre-natal sensitivity*. As indicated above, NRDC relies on evidence of qualitative pre-natal sensitivity (i.e., effects more severe in the young as compared to adults) as grounds for retaining the children’s safety factor for pyraclostrobin. NRDC’s objections appear to argue that the mere indication of increased qualitative sensitivity requires EPA, as a legal matter, to retain the children’s safety factor. That legal interpretation is without merit as explained above. NRDC may, however, have been asserting that the evidence bearing on pre-natal sensitivity for pyraclostrobin is so significant to the evaluation of the safety of pyraclostrobin that EPA erred in concluding that there was reliable data to determine that removing the children’s safety factor would be protective of the safety of children.

NRDC claims two pyraclostrobin studies show that pyraclostrobin causes increased qualitative pre-natal sensitivity: the developmental study in rats and the developmental study in rabbits. The developmental study in rats found that pre-natally exposed fetuses had adverse effects at 50 milligrams/

kilogram of body weight/day (mg/kg/day) and that the maternal animals had adverse effects at the lower dose of 25 mg/kg/day. The NOAELs in fetuses and maternal animals respectively were 25 mg/kg/day and 10 mg/kg/day. (Refs. 9 at 4; and 12). NRDC contends that the study showed qualitative pre-natal sensitivity because the effects in the fetuses (incidences of dilated renal pelvis and cervical ribs with no cartilage) were more severe than the effects in the maternal animals (reduced body weight, reduced body weight gain, food intake, and food efficiency). The developmental study in rabbits showed adverse effects in fetuses and the maternal animals at the same level (LOAEL – 10 mg/kg/day; NOAEL – 5 mg/kg/day). (Refs. 9 at 5–6; and 13). NRDC asserts that effects in the fetuses (increased resorption and post-implantation loss) however, are more severe than in the maternal animals. (Ref. 1 at 7).

BASF in its comments disputes NRDC’s claims of qualitative sensitivity. First, BASF claims that effects seen in the rat fetuses were not caused by exposure to pyraclostrobin. To support this assertion BASF argues that adverse effects were within the level to be expected based on historical information on this species of rat. Second, BASF claims that the rabbit developmental study does not evidence qualitative sensitivity because the effects in the fetuses were derivative of the effects on the maternal animals. Noting that decreased weight gain in the maternal animals was dramatic (39% at the LOAEL and 77% at the next higher dose), BASF argues that it is to be expected that “the dam’s ability to deliver full-term fetuses [would be affected] and does not reflect a direct action of the test material on the fetus.” (Ref. 11 at 2).

In the pyraclostrobin rulemaking, EPA characterized the effects in the rabbit, but not the rat, study as evidencing qualitative sensitivity in the young. EPA further determined that there was a low degree of concern as to the sensitivity seen in the rabbit study because the effects in the rabbit fetuses occurred at the same dose that adverse effects occurred in the maternal animals and a clear NOAEL for the effects seen in the fetuses was identified and taken into account in assessing potential risk to humans. In light of NRDC’s objections and BASF’s comments, however, EPA has re-examined its earlier conclusions both as to the presence or absence of qualitative sensitivity in the rat and rabbit fetuses and the degree of concern raised by the studies regarding the protection of infants and children.

i. *Rat developmental study*. To recap, in the rat developmental study, pyraclostrobin exposure resulted in dilated renal pelvis and cervical ribs with no cartilage in the rat fetuses at 50 mg/kg/day (with a NOAEL of 25 mg/kg/day) and reduced body weight in the maternal animals at the lower dose of 25 mg/kg/day (with a NOAEL of 10 mg/kg/day). EPA does not believe that these findings support retention of the children’s safety factor for four reasons.

First, there is substantial evidence indicating that the effects seen at the high dose in the fetuses (dilated renal pelvis and cervical ribs with no cartilage present) were not treatment-related. These effects occur with some frequency in rats. Historical data from the lab conducting the study showed that, for rat controls in other studies, dilated renal pelvis was seen in between 8.8 and 28.8 percent of rat fetuses, and cervical ribs with no cartilage present was seen in between 0.5 and 6.6 percent of rat fetuses. (Ref. 14 at 2–3). In the pyraclostrobin rat study, dilated renal pelvis was detected in 18.8 percent of the fetuses and cervical ribs with no cartilage present was found in 5.1 percent. (Id.). Because these effects appeared at a rate consistent with those seen in control groups, this study outcome carries little weight.

Second, the effects in fetuses are not more severe than the reduced body weight seen in maternal animals. Dilated renal pelvis and cervical ribs with no cartilage present are relatively common effects in rat fetuses and are regarded as reversible developmental variations in that they often disappear as the animal matures. Dilated renal pelvis involves an enlargement of the portion of the kidney referred to as the pelvis. The renal pelvis is a funnel-shaped region that collects urine before it is discharged through the ureter. When the renal pelvis becomes dilated or enlarged there may be difficulties in discharging urine. As the historical control data cited above shows, this is a fairly common event in rats. The enlargement is related to rapid renal growth late in the gestation period and it generally is resolved following birth so long as no other abnormalities are present in the kidney. (Ref. 15). A cervical rib without cartilage is a supernumerary (or extra) rib that commonly disappears after birth as ossification of the bone is unlikely to occur in the absence of cartilage. Because these effects are generally reversible post-natally, were seen with pyraclostrobin at the high dose only, and were within the range of historical controls, it was reasonable for EPA not to treat them as a severe effect. On the

other hand, reduced body weight, while not one of the more severe effects seen in animal studies, is nonetheless a sign of generalized toxicity that merits concern. Thus, the effects in the fetuses are not properly characterized as more severe than the effects in maternal animals.

Third, reduced body weight in the maternal animals was found at a lower dose than the dose which resulted in dilated renal pelvis and cervical ribs with no cartilage present in the fetuses. Thus, on a quantitative basis, adult animals proved more sensitive than the fetuses.

Fourth, and probably most important, a clear NOAEL was identified for the effects seen in the fetuses. That NOAEL was taken into consideration in setting the RfD/PAD for pyraclostrobin as EPA examined all of the NOAELs from relevant studies to identify the lowest NOAEL. Accordingly, the RfD/PAD for pyraclostrobin was set at least 100-fold (10X for inter-species sensitivity and 10X for intra-species variability) below the safe level (NOAEL) for rat fetuses in the rat developmental study. In fact, as to the NOAEL for the fetal effects seen in the rat developmental study, there was a greater than 100-fold margin because the NOAEL in the rat developmental study for maternal animals was lower than the fetal NOAEL, and a still lower NOAEL from another study was used to set the RfD/PAD. (Ref. 8 at 12–13).

Accordingly, after re-evaluating the rat developmental study, EPA concludes that (1) the study does not show increased qualitative sensitivity in rat fetuses; and (2) given the results of the study and the manner in which those results were incorporated into EPA's risk assessment for infants and children, there is reliable data to show, with regard to developmental effects in rats, that it is safe to remove the children's safety factor.

ii. *Rabbit developmental study.* As noted above, the findings in the rabbit developmental study were that, at the same dose level, pyraclostrobin caused reduced body weight and reduced body weight gain in maternal animals, and increased resorption of fetuses. EPA concluded that, because fetal resorptions were more serious than body weight effects, this study shows increased qualitative sensitivity in rabbit fetuses; however, EPA concluded that the traditional safety factors provide sufficient protection for infants and children. (Ref. 9 at 7). NRDC argues that because the study shows qualitative sensitivity the children's safety factor must be retained. Taking a different tack, BASF does not contend that fetal

resorptions are not more serious than body weight effects but instead claims that the resorptions are derivative of the effects on the maternal animals and thus not evidence of qualitative sensitivity.

EPA disagrees with BASF that the fetal resorptions are derivative of the body weight effects. To the extent either effect is derivative of the other, it is the decreased body weights in maternal animals that is the result of the fetal resorptions, not the other way around. Body weight decreases in the maternal animals were due, in large part, to decreases in the weight of the gravid uterus (a uterus containing a fetus or fetuses). In turn, weight loss in the gravid uterus was a result of the fetal resorptions. (Ref. 14 at 7). In light of this finding, as well as the other evidence of gestational effects (e.g. blood in the bedding), EPA concludes there is insufficient evidence to classify the resorptions as a derivative effect.

EPA, however, also disagrees with NRDC regarding the significance of the finding of qualitative sensitivity based on fetal resorptions and reaffirms its conclusion that there is low concern that traditional safety factors are not protective of the fetal effects seen in the rabbit developmental study. Not only were the fetal effects seen at the same quantitative levels as the maternal effects but clear NOAELs were identified for both the fetal and maternal effects in that study. These NOAELs (which were identical) formed the basis for the RfD/PAD for pyraclostrobin. Specifically, EPA used the NOAELs in establishing the RfD/PAD by dividing the NOAELs by 10X safety factors for inter- and intra-species variability (total of 100X). Having clearly defined the threshold for the qualitatively more sensitive effects in the young, and applied a 100X safety factor to the NOAEL below the threshold, EPA concludes it is safe for infants and children not to retain an additional 10X factor.

b. *Immunotoxicity.* NRDC claims various studies show that males and females have different levels of sensitivity to pyraclostrobin. According to NRDC, some of the studies indicated males were more sensitive and others indicated females were more sensitive. NRDC calls particular attention to alleged heightened female sensitivity to immunotoxic effects in the 90-day oral toxicity study in the mouse and claims that this sensitivity "is supported by substantial data demonstrating that females are more likely than males to develop autoimmune diseases in response to environmental stressors." (Ref. 1 at 6). Based on this alleged sensitivity of females to immunotoxic

results, NRDC then argues that "[b]ecause EPA does not routinely test pesticides for immunotoxicity, the full repercussions of these results for female mortality and morbidity (i.e. autoimmune disease, compromised immune response, etc.) should be considered a serious potential risk of pyraclostrobin" and merits retention of the children's safety factor. EPA interprets this argument as essentially a claim that EPA cannot remove the children's safety factor because it has inadequate data on the immunotoxic effects of pyraclostrobin.

BASF responds to NRDC by asserting that the children's safety factor was not intended to address differential sensitivities between males and females. Further, BASF asserts that any differences in sensitivity are taken into account in the risk assessment because the lowest NOAEL from male or female is used in selecting a safe dose and, in addition, a tenfold safety factor is applied to this NOAEL to address any lingering uncertainty as to differential male/female sensitivity.

While EPA agrees generally with BASF's comments, EPA does not believe that they address NRDC's core concern here which is the adequacy of the data pertaining to pyraclostrobin's immunotoxic potential. EPA has identified the immune system as a target of pyraclostrobin; however, EPA believes that pyraclostrobin's immunotoxic effects have been well-characterized and that no additional data is needed to protect against immunotoxic risks.

Currently, EPA does not routinely require that pesticides be tested specifically for immunotoxicity. Toxicology data requirements for a food-use pesticide, however, typically contain data that provide information for evaluating potential hazard to the immune system. For example, examination (in varying degrees) of the macro- and/or microscopic structural anatomy of immune system organs and tissues is performed in a number of toxicity studies, including the 90-day subchronic studies in multiple species, the chronic and carcinogenicity studies, the prenatal developmental toxicity studies (rats and rabbits), acute inhalation toxicity study, and the two-generation reproduction and fertility effects study. Additionally, non-specific indicators of a diseased state in the animal (e.g., clinical behavior which is evaluated by detailed observations throughout the conduct of all guideline animal studies) can also be useful in discerning perturbations in immune system function. If these toxicity studies show findings indicative of possible

immunotoxicity, they are given due consideration in the risk assessment. (Ref. 16 at 3).

EPA is considering requiring specific immunotoxicity testing for pesticides in the future. If the toxicity studies are inconclusive regarding immunotoxicity, there is concern, depending on the pesticide, that potential immunotoxic effects may not have been identified. Accordingly, the Agency has proposed that the pesticide toxicity data requirements be amended to require adult immunotoxicity testing for all pesticides. (70 FR 12277 (March 11, 2005)). The proposed immunotoxicity testing would improve the likelihood that pesticides which have potential immunotoxic effects will be identified. If these proposed amendments are adopted, EPA will have to make determinations as to the timing of requiring these tests for existing pesticides and what the implications are for application of the children's safety factor of this new data requirement. The Children's Safety Factor policy recommends that this safety factor is more appropriate in situations when a study is requested "for cause" as opposed to a request based on more general considerations. EPA is likely to apply a similar approach to broadly-imposed new data requirements for immunotoxicity testing; although the requirements may apply to all pesticides, only those pesticides for which immunotoxicity is a specific concern would require retention of the children's safety factor. Important considerations in this analysis are likely to be the sensitivity of any immunotoxicity effects seen in the existing database (i.e., is the RfD/PAD based on the immunotoxic responses or do such effects only occur at higher doses), the degree to which any immunotoxicity effects are seen across studies and across species, and the nature and severity of the immunotoxic effects.

For pyraclostrobin, EPA's analysis of the existing data identified the immune system as a target organ but not the primary target. Effects were seen in the thymus, an important gland in the immune system, in terms of thymus atrophy and lymph node apoptosis. The thymus effects were seen in the 90-day study in mice at high doses (NOAEL/LOAEL of 30.4/119 mg/kg/day in males and NOAEL/LOAEL of 12.9/40.4 mg/kg/day in females). In a chronic/carcinogenicity study in mice, these effects were not seen at the highest dose tested (17.2 mg/kg/day for males and 32.8 mg/kg/day for females). Similar findings were not seen in available data with rats and dogs. Although decreased

thymus weights were found at the highest dose (29–36 mg/kg/day) in the pups in the two-generation rat reproduction study, EPA does not interpret this effect as an immunotoxic response because total pup weights were reduced and "relative" thymus weights (the ratio of thymus weight/body weight) was normal. (Ref. 16 at 2). Similarly, in a recently submitted inhalation study, apparent thymus weight effects were seen, but again EPA concluded this was not an immunotoxic response given the lack of any confirming histopathological findings in the thymus and the excessively toxic level of the dose at which the thymus effects were seen. (Refs. 16 at 2 and 17).

EPA believes that the immunotoxic potential of pyraclostrobin has been well-characterized; that no additional data is needed taking into account all of the evidence bearing on potential immunotoxic effects; and that identification of immunotoxic effects in the 90-day mouse study does not support retention of the children's safety factor to protect the safety of infants and children. Most important to these findings are the facts that (1) immunotoxic effects were only seen at high doses in one study in the mouse – no immunotoxic effects were seen in other mouse studies or in studies in other species; and (2) combining the data from the 90-day mouse study and the chronic/cancer study in mice shows a NOAEL for immunotoxic effects for both male and female mice (30.4 mg/kg/day for males from the 90-day mouse study and 32.8 mg/kg/day for females in the chronic/cancer study) that is approximately 10X higher than the NOAEL used to set the RfD/PAD (3.4 mg/kg/day from the rat chronic study).

Although EPA has required the submission of developmental immunotoxicity data for two pesticides, those pesticides have a markedly different toxicological profile than pyraclostrobin. The two pesticides in question, clothianidin and dinotefuran, caused immunotoxic effects in multiple studies and species, and rat pups in the two generation rat reproduction study appeared to be more sensitive to these immunotoxic effects than adult animals. Further, the immunotoxic effects for these pesticides were the most sensitive effects seen in the database and were used to set the RfD/PAD for the pesticides. These circumstances are markedly different from pyraclostrobin where an immunotoxic effect was seen at a high dose in only one study.

c. *Two-generation reproduction study.* NRDC claims that the two-generation reproduction study in rats is invalid because it did not show adverse effects

at any dose and that it cannot be rehabilitated by reference to the one-generation reproduction study because that study is contradictory in that it showed adverse effects at levels below levels tested in the two-generation study. BASF disputes NRDC's contention, arguing that the two-generation study did show some adverse effects at the highest dose tested and these effects were consistent with the one-generation study and "fit along a dose-response curve with the two doses in the [one-generation] range-finding [reproduction] study." (Ref. 11 at 3.)

EPA disagrees with NRDC. An examination of all of the data from the two reproduction studies indicates that the reproduction effects of pyraclostrobin have been adequately characterized and no further data is needed.

The two-generation reproduction study and the one-generation reproduction study both tested the same strain of male and female Wistar rats from the same source. Using the same batch and purity of pyraclostrobin (BAS 500 F; Batch No. J.-No. 27882/199/b or /c; 98.7%), the two-generation study tested 0, 25, 75 or 300 ppm and the one-generation study tested 200, 400 and 600 ppm of Pyraclostrobin. This corresponds to 0, 2.5/2.6, 7.4/7.8 and 29.0/30.4 mg/kg/day (males/females ("M/F")) for the two-generation reproduction study and 0, 20.5/21.3, 39.9/42.5 and 59.1/60.4 mg/kg/day (M/F) for the one-generation reproduction study. (Ref. 14 at 7–8).

In evaluating the results of these studies, EPA concluded that the one-generation reproduction study resulted in statistically significant, adverse body weight effects in parental animals at the mid (39.9/42.5 mg/kg/day) and high (59.1/60.4 mg/kg/day) doses and in pups at the low (20.5/21.3 mg/kg/day) as well as the mid and high doses. On the other hand, EPA determined that none of the doses used in the two-generation reproduction study (2.5/2.6, 7.4/7.8 and 29.0/30.4 mg/kg/day) caused statistically significant adverse effects in the parental animals or the offspring. Further, EPA initially classified the two-generation reproduction study as unacceptable due to its failure to identify statistically significant adverse effects and indicated that the study should be repeated at higher doses.

Upon reevaluation, EPA concluded that, when taken together, the two reproduction studies fulfilled the requirement for a two-generation reproduction study and a second reproduction study did not have to be conducted. Importantly, the two-generation study did show treatment-

related effects on body weight; these effects, however, were not judged significant enough to be considered adverse. Body weight decrements of 5 percent or less were consistently seen in both maternal and paternal animals at the high dose in the two-generation study and slightly greater weight decrements were seen in the first and second generation pups. (Refs. 14 at 8; 18). Specifically, the first and second generation pups of the high dose group (29.0/30.4 mg/kg/day) had decreased body weights on days 14 and 21 and on day 7 as well in second generation pups. The decreases were slightly more pronounced in the second generation (9 to 13%) than in the first (4 to 10%). In the one-generation study, the body weight decrease in pups between days 7 and 21 for the low (20.5/21.3 mg/kg/day), mid (39.9/42.5 mg/kg/day), and high (59.1/60.4 mg/kg/day) doses groups pups were 7 to 14 percent, 11 to 20 percent, and 24 to 37 percent, respectively. (Ref. 14 at 8). As Table 1 indicates, a comparison of the percentage weight loss from the pups in the two studies shows that the studies are complementary because the dose response curve when comparing the lowest two doses in the one-generation study with the highest dose in the two-generation study only slightly deviates from what might be expected. EPA concludes that this slight deviation in the dose response curve is likely due to normal variability in mammalian response and variability in human and instrumental measurements rather than any defect in the two-generation study.

TABLE 1.—BODY WEIGHT LOSS IN PUPS IN THE ONE- AND TWO-GENERATION RAT REPRODUCTION STUDIES

Dose (mg/kg/day) for Males/Females	Study	Weight Loss (days 7–12)
20/21	One-generation	7–14%
29/30	Two-generation	4–10% (first generation)* 9–13% (second generation)
40/42	One-generation	11–20%

*Days 14 - 21 only.

The consistency of effect and response from the two studies refute NRDC's claims regarding the contradictory nature of the findings from the two studies.

Moreover, although the body weight effects seen at the highest dose in the two-generation reproduction study were not significant enough to be judged adverse, a new study would not provide any additional data for risk assessment purposes. The concern with that study is not that it did not test at a low enough dose, but the opposite. Repeating the two-generation study at doses similar to and above 29 mg/kg/day (the highest dose tested in the two-generation study) is very unlikely to change the Point of Departure for pyraclostrobin which is currently a NOAEL of 3.4 mg/kg/day from the rat chronic/carcinogenicity study. The conclusion not to request a repeat study is in accord with the decisions made by the Agency's Pesticide Rejection Rate Analysis - Toxicology which states that a study should not be rejected provided that NOAELs are established in other studies that can be used to estimate a reference dose. (Ref. 19). In the case of pyraclostrobin, acute and chronic reference doses for dietary risks as well as doses for non-dietary risks were based on other studies.

d. *Other data deficiencies.* NRDC also claims there are several other significant data deficiencies which necessitate retention of the children's safety factor. For the reasons explained below, EPA does not find merit in this contention.

i. *Anticipated residue data.* NRDC notes that EPA is issuing a data call-in for information bearing on anticipated residues and asserts that this means there is a database deficiency. NRDC cites to page 17016 of the **Federal Register** to support this assertion. In fact, however, there is no data deficiency. If EPA relies on anticipated residue information in establishing a tolerance, it must require, pursuant to section 408(f)(1), that data be provided five years after the tolerance is established demonstrating that the residue levels in food are not above the levels anticipated. 21 U.S.C. 346a(b)(2)(E). Page 17016 of the pyraclostrobin **Federal Register** notice merely notes that EPA is subject to this obligation with regard to pyraclostrobin because it did rely on anticipated residue data in setting the tolerance.

ii. *28-day inhalation study.* NRDC notes that in 2004 a 28-day inhalation study in rats was outstanding and argues that this is a significant data gap. The 28-day inhalation study, however, is used to assess worker risk in connection with application of pyraclostrobin. Inhalation is not a significant exposure pathway for residential post-application exposure due to pyraclostrobin's very low volatility. In any event, this study has

now been submitted and reviewed. The study established a NOAEL of 0.001 milligrams/liter (mg/L) based on hyperplasia of the duodenum, alveolar histiocytosis in the lungs, and olfactory atrophy/necrosis in the nasal tissues at 0.030 mg/L (LOAEL). (Ref. 17). This endpoint will be taken into account in the future in an updated occupational risk assessment for pyraclostrobin.

iii. *Rat chronic toxicity study.* NRDC claims the chronic toxicity study in rats was unacceptable due to failure to test at a dose high enough to produce significant toxicity. NRDC cites an October 2004 rulemaking for pyraclostrobin, (67 FR 63083, 63086 (October 29, 2004)), in support of this claim. The October 2004 **Federal Register** statement, however, was an error because EPA had determined in 2003 that the dosing in the rat chronic study was adequate. Specifically, EPA concluded in an October 2003 memorandum that "[u]pon reevaluation at the September 10, 2003 meeting, the [Cancer Assessment Review Committee] concluded that female rats were tested adequately at the top dose of 200 ppm." (Ref. 20 at 23). The re-evaluation was based on additional data and statistical analysis bearing on the rat chronic study. EPA found that "[t]here was a statistically significant decrease in cumulative body weight gain compared to controls across study intervals from Day 147 to study termination in the 200 ppm group females." (Id.). It had been previously determined that male rats were tested at a high enough dose. (Id. at 22).

iv. *Mouse carcinogenicity study.* NRDC claims the mouse carcinogenicity study was unacceptable due to failure to test at a dose high enough to produce significant toxicity. EPA originally concluded that this study had to be re-conducted at a higher dose; however, based on interim reports from a second study, using a higher dose, EPA found the dosing in the first mouse carcinogenicity study to be adequate. (Ref. 21). The second study involved a dose of 360 ppm which is double the high dose in the first study. Within a short period the study evidenced severe reductions in body weight and body weight gain at the 360 ppm dose. (Ref. 22). After 6 months of the study, EPA agreed that the 360 ppm dose was excessive and permitted the study to be terminated concluding that based on both studies, it had sufficient information to determine that the dosing in the first study was high enough to adequately characterize any cancer potential of pyraclostrobin. Following formal submission of the data, EPA confirmed that, compared to control

animals, there was a large decrease in the body weight/ body weight gain of female mice at 360 ppm up to the end of the study. Mean body weight of treated females was significantly decreased by 4–24% compared with that of controls during the study and was 21% less than that of controls when the study was terminated at 7 months. Weight gain, relative to controls, was reduced by 37% ($p \leq 0.01$) during the first 91 days of the study and by 40% ($p \leq 0.01$) over the entire study. (Ref. 23).

v. Dermal absorption study. NRDC claims the dermal absorption study was inadequate. NRDC notes that EPA described the study as unacceptable but nonetheless used it to calculate the percentage of dermal absorption by pyraclostrobin. EPA acknowledges that there were difficulties with the dermal absorption study; however, EPA was ultimately able to use the data obtained from this study to calculate pyraclostrobin's dermal absorption rate. (Ref. 9 at 15–16). The difficulty with the study was that most of the pyraclostrobin intended to be applied to the skin of the animal, remained in the dressing used to cover the skin where pyraclostrobin was applied. Because, however, the amount of pyraclostrobin that remained in the dressing was measured, it was possible to calculate what amount of pyraclostrobin was applied to the skin and hence, by comparing this amount to the amount absorbed by the animal, to derive the dermal absorption rate. In the underlying science memorandum, EPA initially characterized the study as unacceptable without expressly noting that its ability to derive a dermal absorption rate despite the flaws in the study made the study acceptable. EPA's initial characterization of the study was mistakenly cited in the 2004 **Federal Register** notice relied upon by NRDC. EPA notes that BASF claims to have submitted a new dermal absorption study but EPA has not received such a study from BASF.

e. Conclusion with regard to NRDC's factual allegations. For the reasons described above, EPA rejects each of NRDC's claims regarding the need for additional data or alleged deficiencies in submitted data.

B. NRDC's Claim that EPA's Tolerance Decision was Arbitrary and Capricious

NRDC also claims that it was arbitrary and capricious for EPA to establish the challenged pyraclostrobin tolerances because EPA did not review needed safety data and because "EPA failed to explain adequately its departure from the required children's safety factor." (Ref. 1 at 10). As to the first contention,

NRDC relies on its prior allegations regarding missing or deficient data. Because EPA has above rejected each of these claims regarding missing or deficient data, EPA also disagrees that its tolerance decision was arbitrary or capricious due to a failure to consider needed data.

NRDC provides no further elaboration with regard to its claim that EPA did not provide an adequate explanation of its decision on the children's safety factor. EPA explained its reasoning in both the preamble to the final rule promulgating the challenged pyraclostrobin tolerances, (71 FR at 17018), and in an earlier tolerance rulemaking on pyraclostrobin, (69 FR at 63092–63093), that was cross-referenced in the later action. EPA's regulations require that the basis for objections be stated with "particularity," (40 C.F.R. 178.25(a)(2)), and NRDC's failure to provide any basis for its lack of explanation contention is alone grounds for denial of this objection. Nonetheless, EPA reiterates below its reasoning for removal of the children's safety factor.

In determining whether there are reliable data showing that a different safety factor would be safe for evaluating the risks of pyraclostrobin to infants and children, EPA has focused primarily on three issues: (1) The completeness of the toxicity database; (2) the completeness of the exposure database; and (3) what the data show with regard to pre- and post-natal toxicity.

This analysis did not occur in isolation but in the context of the overall risk assessment for pyraclostrobin. Before it makes any children's safety factor decision, EPA analyzes the toxicity and exposure databases. EPA's process with regard to toxicity data is described in its Children's Safety Factor policy:

Before any decisions are made on the appropriate FQPA safety factor applied to ensure the safety of infants and children from the use of a particular pesticide, all of the relevant submitted data for the pesticide should be assembled and reviewed by Agency scientists. The toxicology database is evaluated to identify potential adverse effects, to determine the adequacy of the available data to characterize potential human risks, and to analyze the relationship between dose and response, that is, the levels at which the chemical causes adverse effects in test animals. The assessment of the potential for adverse health effects in infants and children is part of the overall hazard and dose-response assessment for a chemical. Available data pertinent to children's health risks are evaluated along with data on adults and the NOAEL (no-observed-adverse-effect-level) or benchmark dose (BMD) for the most sensitive critical effect(s) based on consideration of all health effects. By doing

this, protection of the health of children will be considered along with that of other sensitive populations. (Ref. 5 at 7).

A similar process is undertaken to estimate exposure for all exposed population subgroups. Once these toxicity and exposure analyses are complete, EPA turns to the three critical factors pertaining to the children's safety factor described above and conducts a weight-of-the-evidence analysis to identify any concerns regarding the safety of infants and children. Finally, each of these factors are considered together in "an integration step wherein the weight-of-evidence analyses for the completeness of the toxicity database, the degree of concern for pre- and postnatal toxicity, and results of the exposure assessments are combined by decisionmakers in evaluating whether the presumptive 10X safety factor should be retained or reliable data justify a different factor that could range from a level of 1X to 10X, and possibility greater than 10X." (Id. at 50).

In assessing the completeness of the toxicity database, EPA considers first whether the core five toxicology studies are available (chronic toxicity study in two species, two-generation reproduction study, and developmental toxicity study in two species) and next whether there are data gaps for any other studies, "particularly those that pertain to evaluating risk to children and other sensitive subpopulations." (Id. at 24.) If data gaps are identified, then "the risk assessor should consider the general, overall value of the particular type of study to the risk assessment." For pyraclostrobin, the toxicity database was adequate because no data gaps pertaining to infants and children have been identified. As explained in Unit VII.A.2., EPA disagrees with each of NRDC's claims regarding the existence of data gaps or data deficiencies.

In assessing the completeness of the exposure database, EPA uses a weight-of-the-evidence approach to "address all important sources, routes, and pathways of exposure for the pesticide and include both the expected exposure duration as a consequence of each use and the expected pathway(s) of exposure." (Id. at 36). The object of this analysis is to determine the level of confidence that "the assessment is either highly accurate or based upon sufficiently conservative input that it does not underestimate those exposures that are critical for assessing the risks to infants and children." (Id.). For pyraclostrobin, there is high confidence that the exposure assessment does not

underestimate exposure. EPA examined three pathways of exposure: food, drinking water, and exposure from use on residential turf. As explained in Unit III.B.3.b., EPA follows a tiered approach in estimating pesticide residues in food, first conducting a simple, very conservative assessment (assuming all registered crops contain tolerance level residues) that grossly overestimates exposure from residues in food and then refining that analysis in steps if needed. For pyraclostrobin, EPA conducted a slightly refined analysis. For the acute exposure assessment, EPA assumed all pyraclostrobin-registered crops were treated with pyraclostrobin and that 65 of 73 crops had residues at the tolerance level. For the other crops (various leafy greens and dried beans), EPA assumed residues would be at the highest average value from residue field trials designed to produce maximum residues. For the chronic exposure assessment, EPA used data on percent crop treated for most of the registered crops and assumed tolerance level residues for all registered crops other than apple and pear. For apple and pear, EPA used the average value from residue field trials designed to produce maximum residues.

Although these exposure assessments are somewhat refined, they remain very conservative in comparison to estimates based on monitoring data gathered from food distribution channels. To estimate exposure to pyraclostrobin through residues in drinking water and from treated residential turf EPA used exposure models that incorporate pesticide specific information and are designed to produce high-end estimates of exposure. (Ref. 8 at 30; 69 FR at 30058–30064). Because of this conservative approach to estimating exposure, EPA has very high confidence that its exposure assessment does not underestimate exposure to pyraclostrobin. In all likelihood, it substantially overestimates exposure.

Finally, in examining a pesticide's potential pre- and post-natal toxicity, EPA also conducts a weight-of-the-evidence analysis focusing on whether data show increased sensitivity in the young, how well the dose-response relationship of any pre- or post-natal effects are understood, and, to the extent available, information on a pesticide's toxicokinetics and mode of action. For pyraclostrobin, the key studies on pre- and post-natal toxicity were the rat and rabbit developmental toxicity studies and the one and two generation rat reproduction studies. The rat developmental study showed no increased sensitivity in the rat fetuses (see discussion in Unit VII.A.2.a.i.) and,

in any event, the effects seen in the fetuses occurred at higher doses than the effects in maternal animals. Qualitatively more severe effects were seen in the fetuses in the rabbit developmental study (fetal resorptions compared to body weight effects); however, these effects occurred at the same dose as the adverse effects in the maternal animals and a clear NOAEL level was identified for both the maternal and fetal effects. Finally, the one generation rat reproduction study indicated that rat pups may be quantitatively more sensitive than parental animals in that marginal body weight effects were seen at a lower dose in pups than in parental animals. The two generation rat reproduction study, however, failed to replicate this quantitative sensitivity instead showing that marginal body weight effects occurred in both pups and parental animals at the same dose (see discussion in Unit VII.A.2.c.). Moreover, the two generation study established a clear NOAEL for the body weight effects in both pups and parental animals. Based on this evidence, EPA concluded that the effects on the young were well understood/characterized and that there were no residual concerns that reliance on the traditional 10X intra-species safety factor, when applied to the NOAELs for effects in fetuses and pups, would not be protective of infants and children. (71 FR 17014, 17018 (April 5, 2006); 69 FR 63083, 63092–63093 (October 29, 2004)).

Taking into account that (1) there is a complete toxicity database; (2) the exposure estimate is a likely overestimate of pyraclostrobin exposure; and (3) pyraclostrobin's pre- and post-natal effects are well-defined by the database and there are no residual concerns regarding potential increased sensitivity – EPA concludes that it has reliable data showing that it is safe for infants children to conduct its risk assessment using a 100-fold safety factor without use of the additional 10X children's safety factor.

C. Conclusion on Objections

For the reasons stated above, all of the NRDC's objections are hereby denied.

VIII. Response to Comments on NRDC's Objections

In comments on its own objections, NRDC made two additional arguments. First, NRDC cited general statements that children can be more vulnerable than adults to pesticides and that children may have greater relative exposure to pesticides than adults. These two points, according to NRDC, make it “especially important that EPA

apply the required FQPA safety factor for pyraclostrobin.” (Ref. 10 at 3). EPA does not believe that this general information is particularly helpful in making the specific determination for pyraclostrobin under the children's safety provision. Concerns about children's vulnerability and exposure led to passage of the children's safety factor provision; yet that provision expressly allows EPA to choose a factor different than the presumptive additional 10X safety factor if such different factor is safe for children. NRDC's argument here essentially reads EPA's authority to choose a different factor out of the statute not just for pyraclostrobin but for all pesticides. Further, EPA would note that it has taken into account, in making a decision on the children's safety factor for pyraclostrobin, data estimating children's exposure to pyraclostrobin and data evaluating the relative sensitivity of the young vis-a-vis adults to pyraclostrobin.

An additional claim included in NRDC's comments is that its objections are supported by six documents referenced in the objections. These documents include a letter to EPA, a report from EPA's Office of Inspector General, several law review articles, and the National Academy of Sciences' 1993 report on pesticides and children. Other than listing the documents, NRDC did not explain how these documents support its objections. All of the documents address, at least in part, application of an additional safety factor for the protection of children. None of the documents, however, mentions pyraclostrobin. EPA does not believe that the mere listing of documents, particularly such general documents as these, trigger any obligation upon the Agency to respond to the substance of the documents. Further, the failure of NRDC to offer any substantive explanation as to why these documents were included in its comments means that NRDC has not presented or exhausted any issues, questions, or conclusions contained in these documents before the Agency. The reason for the exhaustion requirement in section 408 as to tolerance issues is so that EPA may make a full record on an issue and bring its experience to bear on it. (*Nader v. EPA*, 859 F.2d 747, 754 (9th Cir. 1988)). Because NRDC has not presented any issues, questions, or conclusions contained in these documents to EPA, it cannot, should it challenge this Order in court, cite matters in these documents to the court as supporting its objections. For the

same reason, EPA will not include these documents in the record for this action.

IX. Regulatory Assessment Requirements

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

X. Submission to Congress and the Comptroller General

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

XII. References

1. Natural Resources Defense Council, "Objection to the Establishment of Tolerances for the Pesticide Chemical Residues of Pyraclostrobin" Docket Id No. EPA-HQ-OPP-2004-0292 (June 5, 2006).
2. Office of Pesticide Programs, U.S. EPA, Available Information on Assessing Pesticide Exposure From Food: A User's Guide (June 21, 2000).
3. U.S. EPA, Residue Chemistry Test Guidelines: OPPTS 860.1500 Crop Field Trials (August 1996).
4. Office of Pesticide Programs, U.S. EPA and Pest Management Regulatory Agency, "Health Canada, NAFTA Guidance Document for Guidance for Setting Pesticide Tolerances Based on Field Trial Data" (September 28, 2005).
5. Office of Pesticide Programs, U.S. EPA, "Determination of the Appropriate FQPA Safety Factor(s) in Tolerance Assessment" (January 31, 2002).
6. Office of Pesticide Programs, U.S. EPA, "The Use of Data on Cholinesterase Inhibition for Risk Assessments of Organophosphorous and Carbamate Pesticides" (August 18, 2000).
7. Office of Pesticide Programs, U.S. EPA, Versar Corporation, "Standard Operating Procedures (SOPs) for Residential Exposure Assessments" (Draft, December 19, 1997).
8. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Barry O'Keefe to John Bazuin/Cynthia Giles-Parker, "Pyraclostrobin Human Health Risk Assessment to Account for Revised Tolerances on Succulent Beans, Dried Shelled Peas and Beans, and Strawberries, and to Establish Tolerances on Mangos and Papayas" (November 30, 2005).
9. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Ghazi Dannan to William Wassell, "PYRACLOSTROBIN - 3rd Report of the Hazard Identification Assessment Review Committee" (February 10, 2003).
10. Natural Resources Defense Council, Re: "Objection to the Establishment of Tolerances for Pesticide Chemical Residues of Pyraclostrobin," Docket ID No. EPA-HQ-OPP-2004-0292 (September 9, 2006).
11. BASF Corporation, Docket ID [EPA-HQ-OPP-2004-0292; FRL-8076-81 "Pyraclostrobin; Objections to Pesticide Tolerances; Notice of Availability," Federal Register, Vol 71, No. 138, July 19, 2006 (September 12, 2006).
12. Health Effects Division, Office of Pesticide Programs, U.S. EPA, Data Evaluation Record (TXR#: 0051615): "Prenatal Developmental Toxicity Study" (*Teratology*); Species: Rat; Guideline: OPPTS 870.3700; OPP 83-3a; "Pyraclostrobin" (April 29, 2003).
13. Health Effects Division, Office of Pesticide Programs, U.S. EPA, "Data Evaluation Record (TXR#: 0051615): Prenatal Developmental Toxicity Study" (*Teratology*); Species: Rabbit; Guideline: OPPTS 870.3700; OPP 83-3b; "Pyraclostrobin" (April 29, 2003).
14. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Ghazi Dannan to Cynthia Giles-Parker/Tony Kish, "HED Response to NRDC Objection to the Establishment of Tolerances for Pesticide Chemical Residues of Pyraclostrobin." Docket ID No. EPA-HQ-OPP-2004-0292. (PC Code 099100) (July 16, 2007).
15. Woo, David C. and Hoar, Richard M., "'Apparent Hydronephrosis' as a Normal Aspect of Renal Development in the Late Gestation of Rats: The Effect of Methyl Salicylate" (*Teratology*; 1972 Oct;6(2):191-6).
16. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Yung Yang to Cynthia Giles-Parker/Tony Kish, "HED Response to NRDC Objection to the Establishment of Tolerances for Pesticide Chemical Residues of Pyraclostrobin." Docket ID No. EPA-HQ-OPP-2004-0292. TXR # 0054635, DP Barcode: D341293, PC Code: 099100. (July 24, 2007).
17. Health Effects Division, Office of Pesticide Programs, US EPA, Data Evaluation Record: Subchronic Inhalation Toxicity - [rat]; OPPTS 870.3465 [82-4]; OECD 413. "Pyraclostrobin; methyl [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]methyl]phenyl]methoxycarbamate" (August 21, 2007).
18. Office of Pesticide Programs, U.S. EPA, Data Evaluation Record, Multigeneration Reproductive Toxicity Species: Rat; Guideline: OPPTS 870.3800; OPP 83-4; EPA MRID No. 45118327, EPA Pesticide Chemical Code: 099100, EPA DP Barcode D269669, D267732, EPA Submission No. S583112, HED TXR#:0051615, Test Material: BAS 500 F (January 16, 2003).
19. Office of Pesticide Programs, U.S. EPA, "Pesticide Rejection Rate Analysis Toxicology," 738-R-93-005, pp. 82-83, (July 1993).
20. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Jessica Kidwell to Ghazi Dannan and Barry O'Keefe, "PYRACLOSTROBIN: Report of the Cancer Assessment Review Committee (Second Evaluation);" PC Code: 099100 (October 22, 2003).
21. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Jessica Kidwell to Ghazi Dannan and Paula Deschamp, "PYRACLOSTROBIN: Third Report of the Dose Adequacy Review Team (DART)" (July 19, 2005).
22. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Jessica Kidwell to Ghazi Dannan, "PYRACLOSTROBIN: Second Report of the Dose Adequacy Review Team (DART)" (March 7, 2005).
23. Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, Memorandum from Jessica Kidwell to Ghazi Dannan and Barry O'Keefe, PYRACLOSTROBIN: Report of the Cancer Assessment Review Committee (Third Evaluation); PC Code: 099100 (February 15, 2007).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 4, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E7-18025 Filed 9-11-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0675; FRL-8145-3]

Pesticide Registration Review; New Docket Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a registration review docket for the following pesticide: Zinc Borate ($3\text{ZnO} \cdot 2\text{BO}_3 \cdot 3.5\text{H}_2\text{O}$; mw 434.66), PC Code 128859, Case number 5025. With this document, EPA is opening the public comment period for this registration review. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before December 11, 2007.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

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

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S.

Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticide you are commenting on. 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](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at [regulations.gov](http://www.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](http://www.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 electronically at

<http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: For information about the pesticide included in this document, contact the specific Chemical Review Manager for this pesticide as identified in the table in Unit III.A.

For general questions on the registration review program, contact Kennan Garvey, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7106; fax number: (703) 308-8090; e-mail address: garvey.kennan@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, farmworker, 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](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- 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. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review published in the **Federal Register** of August 9, 2006, and effective on October 10, 2006 (71 FR 45719) (FRL-8080-4). You may also access the Procedural Regulations for Registration Review on the Agency's website at <http://www.epa.gov/fedrgstr/EPA-PEST/2006/August/Day-09/p12904.htm>. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be periodically reviewed. The goal is a review of a pesticide's registration every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and

commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is periodically reviewing pesticide registrations to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. The implementing regulations establishing the procedures for registration review appear at 40 CFR part 155. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening a registration review docket for the case identified in the following table.

TABLE—REGISTRATION REVIEW DOCKET OPENING

Zinc Borate (3ZnO•2BO3•3.5H2O; mw 434.66), Case number 5025	EPA-HQ-OPP-2007-0675	Michelle Centra (703) 308-2476 centra.michelle@epa.gov
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B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public

comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at http://www.epa.gov/oppsrrd1/registration_review/schedule.htm. Information on the Agency's registration review program and its implementing regulation may be seen at http://www.epa.gov/oppsrrd1/registration_review.

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

List of Subjects

Environmental protection, pesticides and pests, antimicrobials, zinc borate.

Dated: August 30, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E7-18043 Filed 9-11-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0884; FRL-8145-4]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 264-EUP-RUG from Bayer CropScience (BCS) requesting an experimental use permit (EUP) for the plant-incorporated protectants, *Bacillus thuringiensis* Cry2Ae protein and the genetic material necessary for its production (pTEM12) in Event GHB119 or GHB714 cotton plants and the *Bacillus thuringiensis* Cry1Ab protein and the genetic material necessary for its production (pTDL004 or pTDL008) in Event T303-3 or T304-40 cotton plants. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before October 12, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0884, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2007-0884. 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](http://www.regulations.gov) or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.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](http://www.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](http://www.regulations.gov) website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Sharlene R. Matten, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0514; e-mail address: matten.sharlene@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who may be required to conduct testing under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket 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

BCS has requested an EUP, 264–EUP–RUG, to allow for the evaluation of cotton plants that produce the insecticidal protein, *Bacillus thuringiensis* Cry2Ae, as well as cotton plants that produce two insecticidal proteins, *Bacillus thuringiensis* Cry1Ab and Cry2Ae, for protection against lepidopteran cotton pests. For 2008, the proposed acreage includes 94.75 acres of Events GHB119 and/or GHB714, 138.75 acres of Events T303–3 and/or T304–40 cotton plants and Events GHB119 and/or GHB714 cotton plants, and 434.50 acres of non plant-incorporated protectant border areas (688 total acres). Cotton derived from transformation events T303–3 or T304–40 express the plant-incorporated protectant, *Bacillus thuringiensis* Cry1Ab protein (pTDL004 or pTDL008) and the genetic material necessary for its production were included in the previously granted EUP, 264–EUP–140. Cotton events GHB119 or GHB714 express the plant-incorporated protectant, *Bacillus thuringiensis* Cry2Ae protein (pTEM12) and the genetic material necessary for its production. These plants also contain a pesticidal inert ingredient as a selectable marker, the phosphinothricin acetyltransferase (PAT) protein that confers tolerance to glufosinate-ammonium herbicides.

The Cry1Ab and Cry2Ae proteins are being tested for their effectiveness in controlling the following lepidopteran cotton pests: Cotton bollworm (*Helicoverpa zea*), tobacco budworm (*Heliothis virescens*), pink bollworm (*Pectinophora gossypiella*), fall armyworm (*Spodoptera frugiperda*), and beet armyworm (*Spodoptera exigua*).

Four trial protocols have been proposed:

- Introgression (nurseries), evaluation (line trials), and seed increases.

- Evaluation of the insecticidal efficacy against cotton insect pests, under different degrees of insect pressure, in different growing environments and in different genetic backgrounds.

- Evaluation of the agronomic performance in different genetic backgrounds and in different growing regions.

- Generation of plant material and data to support future regulatory submissions in the United States and other countries.

The states involved in the proposed EUP include: Mississippi, North Carolina, South Carolina, Tennessee, and Texas. Proposed shipment/use dates are March 1, 2008 to January 31, 2009.

III. What Action is the Agency Taking?

Following the review of the BCS application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

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

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 29, 2007.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–17769 Filed 9–11–07; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 13, 2007, from 10:30 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- June 12, 2007 (Open and Closed).

B. Business Reports

- FCSIC Financial Report—June 30, 2007.
- Report on Insured and Other Obligations.
- Quarterly Report on Annual Performance Plan.

C. New Business

- Annual Performance Plan FY 2008–2009.
- Proposed 2008 and 2009 Budgets.
- Insurance Fund Progress Review and Setting of Premium Range Guidance for 2008.

Closed Session

- FCSIC Report on System Performance.

Dated: September 6, 2007.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E7–17911 Filed 9–11–07; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Item From September 11, 2007, Open Meeting

September 7, 2007.

The following has been deleted from the list of Agenda items scheduled for consideration at the September 11, 2007, Open Meeting and previously listed in the Commission's Notice of September 4, 2007.

Item No.	Bureau	Subject
4	Media	<p><i>Title:</i> Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 (MB Docket No. 05-311).</p> <p><i>Summary:</i> The Commission will consider a Second Report and Order concerning Section 621(a)(1)'s directive that local franchising authorities not unreasonably refuse to award competitive franchises and the application of the Commission's findings in the First Report and Order to incumbent providers.</p>

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07-4497 Filed 9-10-07; 11:56 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *First Bancorp*, Troy, North Carolina; to acquire 100 percent of the voting shares of Great Pee Dee Bancorp, Inc., and thereby indirectly acquire voting shares of Sentry Bank & Trust,

both of Cheraw, South Carolina, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, September 7, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-17943 Filed 9-11-07; 8:45 am]

BILLING CODE 6210-01-S

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 September 27, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Leandre Joseph Folse; Bonnie Jane Folse; Mark Phillip Folse; Todd John Folse; and the Folse Family Voting Trust; Leandre Joseph Folse; Bonnie Jane Folse; and Mark Phillip Folse, trustees; all of Houma, Louisiana; Carrie Jane Folse, Birmingham, Alabama; The Myrtis Folse Lucas Revocable Trust; Myrtis Folse Lucas, grantor; and The Joe W. Smith Revocable Trust, all of Tulsa, Oklahoma; Joe W. Smith, grantor and trustee; to acquire additional voting shares of Coastal Commerce Bancshares, and thereby indirectly acquire additional voting shares of Coastal*

Commerce Bank, both of Houma, Louisiana.

Board of Governors of the Federal Reserve System, September 7, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-17942 Filed 9-11-07; 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 October 9, 2007.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *KeyCorp*, and *KYCA Corporation*, both of Cleveland, Ohio; to merge with U.S.B. Holding Co. Inc., Orangeburg, New York, and thereby indirectly acquire Union State Bank, Nanuet, New York.

In connection with this application, *KYCA Corporation*; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Union State Bank, Nanuet, New York.

Board of Governors of the Federal Reserve System, September 7, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-17944 Filed 9-11-07; 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, September 17, 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, September 7, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07-4492 Filed 9-7-07; 5:02 pm]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Draft Performance Standards for the Murine Local Lymph Node Assay: Request for Comments

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request for comments.

SUMMARY: The Murine Local Lymph Node Assay (LLNA) is the first alternative test method evaluated and recommended by the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM). It was subsequently accepted by regulatory authorities to determine the allergic contact dermatitis potential of chemicals and products. In January 2007, the U.S. Consumer Product Safety Commission (CSPC) submitted a nomination requesting that NICEATM and ICCVAM assess the validation status of (1) The LLNA as a stand-alone assay for potency determination for hazard classification purposes; (2) modified LLNA protocols; (3) the LLNA limit test; (4) the use of LLNA to test mixtures, aqueous solutions, and metals; and (5) the applicability domain for LLNA. In order to facilitate the review of the modified LLNA protocols, ICCVAM proposed developing performance standards for the LLNA. In May 2007, a **Federal Register** notice was published (Vol. 72, No. 95, pages 27815-27817, May 17, 2007) requesting comments and data relevant to these nominated activities. In June 2007, the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) endorsed the nominated activities as high priorities for ICCVAM. In response to SACATM comments, along with those provided by the public in response to the previous **Federal Register** notice, ICCVAM also endorsed these activities as high priorities. ICCVAM subsequently prepared draft performance standards for the LLNA and now requests public comments on this draft document, which is available on the NICEATM/ICCVAM Web site at: (<http://iccvam.niehs.nih.gov/methods/immunotox/immunotox.htm>) or by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** below).

DATES: Submit comments on or before October 29, 2007.

ADDRESSES: Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box

12233, MD EC-17, Research Triangle Park, NC 27709, (fax) 919-541-0947, (e-mail)

niceatm@niehs.nih.gov. Courier address: NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709. Responses can be submitted electronically at the ICCVAM-NICEATM Web site: http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm or by e-mail, mail, or fax.

FOR FURTHER INFORMATION CONTACT:

Other correspondence should be directed to Dr. William S. Stokes (919-541-2384 or niceatm@niehs.nih.gov).

SUPPLEMENTARY INFORMATION:

Background

The LLNA is an alternative test method used for skin sensitization testing that reduces the number of animals needed, reduces the time required for testing, and can substantially reduce or avoid pain and distress associated with traditional guinea pig testing methods. The LLNA was the first alternative test method evaluated and recommended by ICCVAM and based on the recommendations of ICCVAM and an independent scientific peer review panel, the LLNA has been accepted by U.S. and international regulatory authorities as an alternative to the guinea pig maximization test and Buehler test for assessing allergic contact dermatitis (EPA 2003; ISO 2002; OECD 2002). Since 2003, ICCVAM has routinely developed performance standards for test methods; however, because the concept of performance standards was not developed by ICCVAM until 2003, they were not developed during the ICCVAM evaluation of the LLNA in 1998 (NIH Publication No. 99-4494, available: (http://iccvam.niehs.nih.gov/docs/immunotox_docs/llna/llnarep.pdf)).

In January 2007, CSPC submitted a nomination requesting that NICEATM and ICCVAM assess the validation status of (1) The LLNA as a stand-alone assay for potency determination for classification purposes; (2) modified LLNA protocols; (3) the LLNA limit test; (4) the use of LLNA to test mixtures, aqueous solutions, and metals; and (5) the applicability domain for LLNA. ICCVAM endorsed the nomination and also decided to develop performance standards to facilitate evaluation of modified LLNA protocols to the traditional LLNA. In May 2007, a **Federal Register** notice was published requesting comments and data relevant to these activities (Vol. 72, No. 95, pages 27815-27817, May 17, 2007; available,

http://iccvam.niehs.nih.gov/SuppDocs/FedDocs/FR/FR_E7_9544.pdf). In June 2007, SACATM endorsed these activities as high priorities for ICCVAM. In response to SACATM comments, along with those provided by the public in response to the previous **Federal Register** notice, ICCVAM endorsed these activities, including the development of performance standards, as high priorities. ICCVAM subsequently prepared draft performance standards for the LLNA, which are available on the NICEATM/ICCVAM Web site at: (<http://iccvam.niehs.nih.gov/methods/immunotox/immunotox.htm>).

These draft test method performance standards are proposed to evaluate the performance of LLNA test methods that incorporate specific modifications to the measurement of lymphocyte proliferation in the traditional LLNA. These modifications focus specifically on incorporating non-radioactive procedures to evaluate lymphocyte proliferation in the draining auricular lymph nodes rather than incorporation of radioactivity (i.e., ³H-thymidine), which is used in the traditional LLNA.

Public comments received in response to the draft LLNA performance standards will be considered by ICCVAM during development of a revised draft version of this document. A public meeting is planned for early 2008 where an international, independent, peer review panel will evaluate the revised draft LLNA performance standards and review the other nominated LLNA related activities. Following this meeting, the recommendations of the peer review panel will be made available for public and SACATM comment. ICCVAM will consider the panel report and public and SACATM comments in preparing final LLNA performance standards.

Request for Public Comments

NICEATM invites the submission of written comments on the draft LLNA performance standards. When submitting written comments, please refer to this **Federal Register** notice and include appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if applicable). All comments received by the deadline listed above will be placed on the NICEATM/ICCVAM Web site (<http://ntp-apps.niehs.nih.gov/iccvampb/searchPubCom.cfm>) and made available to the peer review panel and ICCVAM.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 2851-3, available at <http://iccvam.niehs.nih.gov/about/PL106545.htm>) establishes ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of federal agencies. Additional information about ICCVAM and NICEATM is available on the following Web site: <http://iccvam.niehs.nih.gov>.

Dated: September 5, 2007.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E7-18011 Filed 9-11-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: "2008-2009 Medical Expenditure Panel Survey—Insurance Component (MEPS-IC)." In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal**

Register on June 28, 2007 and allowed 60 days for public comment. Public comments were received and have been addressed in the supporting statement, available upon request. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by October 12, 2007.

ADDRESSES: Written comments should be submitted to: Karen Matsuoka by fax at (202) 395-6974 (attention: AHRQ's desk officer) or by e-mail at OIRA_submission@omb.eop.gov (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

2008 and 2009 Medical Expenditure Panel Survey—Insurance Component (MEPS-IC)

The MEPS-IC, an annual survey of the characteristics of employer-sponsored health insurance, was first conducted by AHRQ in 1997 for the calendar year 1996. The survey has since been conducted annually for calendar years 1997 through 2006. AHRQ proposes to continue this annual survey of establishments for calendar years 2008 and 2009. The survey data for calendar year 2008 will be collected in that year. Likewise, calendar year 2009 data will be collected in 2009. This is a change from earlier MEPS-IC collections, when survey data for a calendar year were collected in the following year (i.e., 2005 survey data were collected in 2006). This changeover means that there will be no data collected for the year 2007. However, the data for 2008 and 2009 will now be released a year earlier than would have occurred under the former collection scheme.

This survey will be conducted for AHRQ by the Bureau of Census using a sample comprised of an annual sample of employers selected from Census Bureau lists of private sector employers and governments.

Data to be collected from each employer will include a description of the business (e.g., size, industry) and descriptions of health insurance plans available, plan enrollments, total plan costs and costs to employees.

Data Confidentiality Provisions

All MEPS-IC data collected, both identifiable and non-identifiable, will be stored at the Census Bureau. Their confidentiality is protected under the U.S. Census Bureau confidentiality statute, Section 9 of Title 13, United States Code. In addition, because the Census sample lists are developed using Internal Revenue Service (IRS) Tax Information, the data also fall under the review of the IRS which conducts regular audits of the data collection storage and use (Title 26, United States Code).

The confidentiality provisions of the AHRQ statute at 42 USC 299c-3(c) apply to all data collected for research that is supported by AHRQ. All data products listed below must fully comply with the data confidentiality statute under which their raw data was collected as well as any additional confidentiality provisions that apply.

Data Products

Data will be produced in two forms: (1) Files containing employer information will be available for use by researchers at the Census Bureau's Research Data Centers (all research output is reviewed by Census employees and no identifiable data may leave the Center) and (2) a large

compendium of tables of estimates, produced by Census and containing no identifiable data, will be made available on the AHRQ website. These tables will contain descriptive statistics, such as, numbers of establishments offering health insurance, average premiums, average contributions, total enrollments, numbers of self insured establishments and other related statistics for a large number of population subsets defined by firm size, state, industry and other establishment characteristics such as, age, profit/nonprofit status and union/nonunion status of the workforce.

- The data are intended to be used for purposes such as:
- Generating National and State estimates of employer health care offerings;
 - Producing estimates to support the Bureau of Economic Analysis and the Center for Medicare and Medicaid Services in their production of health care expenditure estimates for the National Health Accounts and the Gross Domestic Product;
 - Producing National and State estimates of spending on employer-sponsored health insurance to study the results of National and State health care policies; and
 - Supplying data for modeling the demand for health insurance.

These data provide the basis for researchers to address important questions for employers and policymakers alike.

Method of Collection

The data will be collected using a combination of modes. The Census Bureau's first contact with employers will be made by telephone. This contact will provide information on the availability of health insurance from that employer and essential persons to contact. Based upon this information, Census will mail a questionnaire to the employer. In order to assure high response rates, Census will follow-up with a second mailing after an interval of approximately 30 working days, followed by a telephone call to collect data from those who have not responded by mail.

For larger respondents with high burdens, such as State employers and very large firms, Census may follow special procedures, as needed. These include performing personal visits and doing customized collection, such as accepting data in computerized formats and using special forms. The response rate for the most recent survey was approximately 79%.

ESTIMATED ANNUAL RESPONDENT BURDEN

Survey years	Annual number of respondents	Estimated time per respondent in hours	Estimated total annual burden hours	Estimated annual cost to the Government
2008	33,262	.57	19,032	\$9,650,000
2009	33,262	.57	19,032	9,950,000

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and

included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Carolyn M. Clancy,
Director.
 [FR Doc. 07-4447 Filed 9-11-07; 8:45 am]
BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day-07-0527]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of

information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

Human Exposure to Cyanobacterial Toxins in Water (OMB No. 0920-0527)—Reinstatement—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cyanobacteria (blue-green algae) can be found in terrestrial, fresh, brackish, or marine water environments. Some species of cyanobacteria produce toxins that may cause acute or chronic illnesses (including neurotoxicity, hepatotoxicity, and skin irritation) in humans and animals (including other mammals, fish, and birds). A number of human health effects, including gastroenteritis, respiratory effects, skin irritations, allergic responses, and liver damage, are associated with the ingestion of or contact with water containing cyanobacterial blooms. Although the balance of evidence, in conjunction with data from laboratory animal research, suggests that cyanobacterial toxins are responsible for a range of human health effects, there have been few epidemiologic studies of this association.

During August 2006, we conducted our first study to assess exposure to microcystins in recreational waters with a bloom of *Microcystis aeruginosa*. We recruited 104 people who gave informed consent to participate. Ninety seven people did their recreational activities on Lake 1, which had a confirmed *M. aeruginosa* bloom, and 7 others did

their activities on Lake 2, which had no bloom. Study participants completed a pre-activity questionnaire, a post-activity questionnaire, provided a 10-ml blood sample, and completed a telephone symptom survey 7–10 days after exposure. The concentrations of microcystins in Lake 1 ranged from 2 to 5 ug/L and in Lake 2 were all below the limit of detection (LOD). When we designed the study, we calculated that a person exposed to recreationally-generated aerosols from water containing 10 ug/L of microcystins should have levels of microcystins in their blood. However, the microcystin concentrations in Lake 2 were below the LOD and in Lake 1 were actually 2ug/L to 5ug/L, much lower than we anticipated based on data from the previous week. Thus, the recreational exposures were not likely high enough for us to quantify microcystins in blood and the serum samples were all below the LOD for microcystins.

For the new data collection, we will conduct two separate studies in different lakes. In total, we will recruit 200 study participants who are at risk for swallowing water or inhaling spray (i.e., water skiers, jet skiers, people sailing small boats) and who would

normally be doing these activities, even in the presence of a bloom. We may recruit people who train for organized swimming events (e.g., triathlons) in lakes. In addition, we will recruit 50 study participants from lakes with no blooms as a comparison group to assess the health effects associated with recreational activities on “clean” lakes. Study participants will be asked to sign a consent form, complete a symptom survey before and after doing their recreational water activities, provide one 10-ml whole blood sample after their recreational activities, and complete a telephone symptom survey 8–10 days after doing study activities.

The purpose of the new data collection is to continue assessing the public health impact of exposure to the cyanobacterial toxins, microcystins, during recreational activities. We will examine the extent of human exposure to microcystins present in recreational waters and associated aerosols and whether serum levels of microcystins can be used as a biomarker of exposure.

There is no cost to the respondents other than their time. The total estimated annualized burden hours are 69.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Screening questionnaire	125	1	5/60
Consent and pre-exposure questionnaire	100	1	10/60
Post-exposure questionnaire	100	1	15/60
10-day post exposure questionnaire	100	1	10/60

Dated: September 6, 2007.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-17962 Filed 9-11-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, CMS is proposing to establish a new system of records (SOR) titled, “Performance Measurement and Reporting System (PMRS),” System No. 09-70-0584. PMRS will serve as a master system of records to assist in projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services so that they can make informed choices among individual physicians, practitioners and providers of services. In cooperation with local or regional public-private collaborative stakeholders; individuals assigned to provider groups; insurance and provider associations; government agencies; employers; accrediting and quality organizations; Chartered Value Exchanges (CVE), data aggregators, and other community leaders who are

committed to improving the quality of services, CMS is laying the foundation for pooling and analyzing information about the quality of medical services and performance provided by physicians and health care providers. PMRS will further assist in developing existing strategies to improve health care quality including transparency of cost and/or price information, quality and utilization information; and patient safety for Medicare beneficiaries by collecting and aggregating data, by measuring performance at the individual physician level, and by reporting meaningful information to Medicare beneficiaries in order to make informed choices and improve outcomes.

Pursuant to the “routine use” promulgated under this system of records notice, CMS or a non-Quality Improvement Organization (non-QIO)

contractor would make the individual physician-level performance measurement results available to Medicare beneficiaries by posting it on a public Web site and by various other methods of data dissemination. If local Web sites are used by a local or regional collaborative, CMS would have links to these Web sites on its main Web site. This information would be made available for the purpose of, and in a manner that would promote more informed choices by Medicare beneficiaries among their Medicare coverage options (i.e., the Medicare Advantage, local or regional plans offered in their area, and original fee-for-service Medicare). The routine uses established with this system contain a proper explanation as to the need for the disclosure provisions and provide clarity to CMS's intention to disclose individual-specific information contained in this system.

The primary purpose of this system is to support the collection, maintenance, and processing of information promoting the effective, efficient, and economical delivery of health care services, and promoting the quality of services of the type for which payment may be made under title XVIII by allowing for the establishment and implementation of performance measures, and the provision of feedback to physicians. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed for the Agency or by a contractor, consultant, or a CMS grantee; (2) assist another Federal and/or state agency, agency of a state government, or an agency established by state law; (3) promote more informed choices by Medicare beneficiaries among their Medicare group options by making physician performance measurement information available to Medicare beneficiaries through a Web site and other forms of data dissemination; (4) provide CVEs and data aggregators with information that will assist in generating single or multi-payer performance measurement results to promote transparency in health care to members of their community; (5) assist individual physicians, practitioners, providers of services, suppliers, laboratories, and others health care professionals who are participating in health care transparency projects; (6) assist individuals or organizations with projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services; or for research, evaluation, and epidemiological projects related to the

prevention of disease or disability; restoration or maintenance of health or for payment purposes; (7) assist Quality Improvement Organizations; (8) support litigation involving the agency; and (9) combat fraud, waste, and abuse in certain health benefits programs. We have provided background information about this new system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See "EFFECTIVE DATES" section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 9/05/2007. To ensure that all parties have adequate time in which to comment, the new system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2-04-27, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m. to 3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Aucha Prachanronarong, Health Insurance Specialist, Division of Ambulatory Care and Measure Management, Quality Measurement and Health Assessment Group, Office of Clinical Standards and Quality, CMS, Room C1-23-14, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. The telephone number is (410) 786-1879 or contact Aucha.Prachanronarong@cms.hhs.gov.

SUPPLEMENTARY INFORMATION: The Value-driven Health Care Initiative is designed to achieve four cornerstones: Interoperable health information technology (HIT); transparency of price information; transparency of quality information; and the use of incentives to promote high-quality and cost-efficient health care. Regional/local public-

private collaboration is essential to the success of this Initiative. As such, the Initiative is encouraging the growth of regional public-private collaboratives that will be chartered by the Agency for Health Research and Quality (AHRQ) to support and achieve the four cornerstones. Only mature, sustainable, multi-stakeholder entities that are committed to achieving the four cornerstones, including publicly reporting physician-level and other provider performance measurement information and facilitating the use of this information to improve the quality and efficiency of health care delivery, will become Chartered Value Exchanges (CVE).

Provided they meet certain criteria established by CMS and disclosure is consistent with the Privacy Act, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and other applicable laws, CMS will provide CVEs with patient de-identified Medicare-inclusive individual physician-level performance measurement results. CMS also may provide physician and patient identifiable protected health claims data information to data aggregators that are HIPAA business associates of CMS (including working with providers, payers, or other HIPAA covered entities) for purposes for generating these results. The patient de-identified results will be calculated using Medicare claims data based on consensus-based measures as determined by CMS, including but not limited to quality, efficiency and utilization metrics. Available results may include single payer (i.e., Medicare only and private payer only performance measurement results) and/or multi-payer (i.e., results generated from merging or aggregating Medicare results with other private payer results) patient de-identified, individual physician-level performance measurement results. CMS also plans to make the patient de-identified and individual physician-level performance measurement results available to Medicare beneficiaries, and others that meet CMS requirements for disclosure.

CMS also has implemented a pilot project known as, "The Better Quality Information to Improve Care for Medicare Beneficiaries (BQI) Project" to develop a model for data aggregation, quality measurement, and public reporting. Through the BQI project, each pilot collaborative, as a QIO subcontractor, is aggregating private claims data with Medicare claims data and, in some cases, Medicaid claims data to produce single payer and/or multi-payer, patient de-identified, individual physician-level performance

measurement results using quality measures that are approved by CMS. These performance measurement results will be made available to Medicare beneficiaries by CMS or a CMS contractor.

In addition, as required by the Tax Relief and Health Care Act of 2006, CMS is implementing a voluntary Physician Quality Reporting Initiative (PQRI). Under PQRI, eligible professionals who choose to participate and successfully report on a designated set of quality measures for services paid under the Medicare Physician Fee Schedule and provided to Medicare beneficiaries under the traditional fee-for-service program, may earn a bonus payment subject to a cap. Participating eligible professionals whose Medicare patients in the traditional fee-for-service program fit the specifications of the PQRI quality measures will report the corresponding appropriate Common Procedural Terminology (CPT) Category II codes or G-codes on their claims. In the future, CMS may publicly release the performance information that is reported by physicians pursuant to PQRI.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for System

Authority for the collection, maintenance, and disclosures from this system is given under provisions of §§ 1152, 1153(c), 1153(e), 1154, 1160, 1851(d) and 1862(g) of the Social Security Act; § 101 of the Tax Relief and Health Care Act of 2006; and §§ 901, 912, and 914 of the Public Health Service Act.

B. Collection and Maintenance of Data in the System

The system contains single and multi-payer, patient de-identified, individual physician-level performance measurement results as well as, patient identifiable clinical and claims information provided by individual physicians, practitioners and providers of services, individuals assigned to provider groups, insurance and provider associations, government agencies, accrediting and quality organizations, and others who are committed to improving the quality of physician services. This system contains the patient's or beneficiary's name, sex, health insurance claim number (HIC), Social Security Number (SSN), address, date of birth, medical record number(s), prior stay information, provider name and address, physician's name, and/or identification number, date of

admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims. The system contains provider characteristics, prescriber identification number(s), assigned provider number(s) (facility, referring/servicing physician), and national drug code information, total charges, and Medicare payment amounts.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. The Privacy Act permits us to disclose information without an individual's consent/authorization if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release PMRS information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum individually identifiable data necessary to achieve the purpose of PMRS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the system will be approved only for the minimum information necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to collect, maintain, and process information promoting the effective, efficient, and economical delivery of health care services, and promoting the quality of services of the type for which payment may be made under title XVIII;

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a reasonable probability that the proposed use of the data would in fact accomplish the stated purpose(s) of the disclosure.

3. Requires the information recipient to:

a. Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record(s);

b. Remove or destroy the information that allows the individual to be identified at the earliest time; and

c. Generally agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PMRS without the consent/authorization of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or CMS grantees who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant, or CMS grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract/similar agreement prohibiting the contractor, consultant, or grantee from using or disclosing the information for any purpose other than that described in the contract/similar agreement and requires the contractor, consultant, or grantee to return or destroy all information at the completion of the contract.

2. Pursuant to agreements with CMS to assist another Federal or state agency,

agency of a state government, or an agency established by state law to:

a. Contribute to projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services;

b. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

c. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

d. Assist Federal/state Medicaid programs which may require PMRS information for purposes related to this system.

Other Federal or state agencies in their administration of a Federal health program may require PMRS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

3. To assist in making the individual physician-level performance measurement results available to Medicare beneficiaries, through a Web site and other forms of data dissemination, in order to promote more informed choices by Medicare beneficiaries among their Medicare coverage options.

This information would be made available to Medicare beneficiaries for the purpose of, and in a manner that would promote more informed choices by Medicare beneficiaries among their Medicare coverage options (i.e., the Medicare Advantage local or Regional plans offered in their area, and original fee-for-service Medicare).

4. To provide Chartered Value Exchanges (CVE) and data aggregators with information that will assist in generating single or multi-payer performance measurement results that will assist beneficiaries in making informed choices among individual physicians, practitioners and providers of services; enable consumers to compare the quality and price of health care services; and assist in providing transparency in health care at the local level if CMS:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(2) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the recipient of the information to establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

d. Make no further use or disclosure of the record except:

(1) For use in another project providing transparency in health care, under these same conditions, and with written authorization of CMS; and

(2) When required by law.

e. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions. CVEs and data aggregators should complete a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

The disclosure of PMRS information to CVEs or data aggregators will support the generation of single or multi-payer performance measurement results that will provide a more comprehensive view of physician performance for Medicare beneficiaries. Both identifiable physician level information and patient de-identified information may be made available to CVEs to enable them to provide transparency in health care on a local level. Identifiable physician and patient level information may be provided to data aggregators that are HIPAA business associates of CMS to conduct CMS' health care operations (including working with other providers, payers, or other HIPAA covered entities to generate single and multi-payer performance information).

5. To assist individual physicians, practitioners, providers of services, suppliers, laboratories, and other health care professionals who are participating in health care transparency projects.

PMRS data will be released to the individual physician only on those individuals who received services ordered or provided by the individual physician and shall be limited to claims and utilization data necessary to perform that specific project function whose information was provided for the PMRS project. Individual physicians, practitioners, providers of services, suppliers, laboratories, and other health care professionals require PMRS information for the purpose of direct feedback with respect to their individual patients on a non-aggregated basis.

PMRS information is needed in order to support evaluations, establish the validity of evidence, or to verify the accuracy of information presented by the individual physician as it concerns

the patient's entitlement to benefits and for services provided.

6. To assist an individual or organization with projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services; or for research, evaluation, and epidemiological projects related to the prevention of disease or disability; restoration or maintenance of health or for payment purposes if CMS:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the recipient of the information to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) For disclosure to a properly identified person, for purposes of providing transparency in health care enabling consumers to compare the quality and price of health care services so that they can make informed choices among individual physicians, practitioners and providers of services;

(b) In emergency circumstances affecting the health or safety of any individual;

(c) For use in another research project, under these same conditions, and with written authorization of CMS;

(d) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(e) When required by law.

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions. Researchers should complete a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

PMRS data will provide data for projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services; and research evaluation; and epidemiological projects with a broader, longitudinal, national perspective of the status of health care provided to Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

7. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

8. To support the Department of Justice (DOJ), court, or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS

would be able to disclose information to the DOJ, court, or adjudicatory body involved.

9. To assist a CMS contractor (including, but not limited to MACs, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste or abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

10. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such programs.

Other agencies may require PMRS information for the purpose of combating fraud, waste or abuse in such Federally-funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, Subparts A and E) 65 Fed. Reg. 82462 (12-28-00). Disclosures of such

PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." (See 45 CFR 164-512 (a) (1)).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A-130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the New System on the Rights of Individuals

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of PMRS.

Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to

provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: September 4, 2007.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM No. 09-70-0584

SYSTEM NAME:

- "Performance Measurement and Reporting System (PMRS)," HHS/CMS/OCSQ

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244-1850 and at various contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains single and multi-payer, patient de-identified, individual physician-level performance measurement results as well as, clinical and claims information provided by individual physicians, practitioners and providers of services, individuals assigned to provider groups, insurance and provider associations, government agencies, accrediting and quality organizations, and others who are committed to improving the quality of physician services.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the patient's or beneficiary's name, sex, health insurance claim number (HIC), Social Security Number (SSN), address, date of birth, medical record number(s), prior stay information, provider name and address, physician's name, and/or identification number, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other

data needed to substantiate claims. The system contains provider characteristics, prescriber identification number(s), assigned provider number(s) (facility, referring/servicing physician), and national drug code information, total charges, and Medicare payment amounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the collection, maintenance, and disclosures from this system is given under provisions of §§ 1152, 1153 (c), 1153(e), 1154, 1160, 1851 (d) and 1862 (g) of the Social Security Act; § 101 of the Tax Relief and Health Care Act of 2006; and §§ 901, 912, and 914 of the Public Health Service Act.

PURPOSE (S) OF THE SYSTEM:

The primary purpose of this system is to support the collection, maintenance, and processing of information promoting the effective, efficient, and economical delivery of health care services, and promoting the quality of services of the type for which payment may be made under title XVIII by allowing for the establishment and implementation of performance measures, and the provision of feedback to physicians. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed for the Agency or by a contractor, consultant, or a CMS grantee; (2) assist another Federal and/or state agency, agency of a state government, or an agency established by state law; (3) promote more informed choices by Medicare beneficiaries among their Medicare group options by making physician performance measurement information available to Medicare beneficiaries through a Web site and other forms of data dissemination; (4) provide Charted Value Exchanges (CVE) and data aggregators with information that will assist in generating single or multi-payer performance measurement results to promote transparency in health care to members of their community; (5) assist individual physicians, practitioners, providers of services, suppliers, laboratories, and other health care professionals who are participating in health care transparency projects; (6) assist individuals or organizations with projects that provide transparency in health care on a broad-scale, enabling consumers to compare the quality and price of health care services; or for research, evaluation, and epidemiological projects related to the prevention of disease or disability; restoration or maintenance of health or for payment purposes; (7) assist Quality

Improvement Organizations; (8) support litigation involving the agency; and (9) combat fraud, waste, and abuse in certain health benefits programs

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Entities Who May Receive Disclosures Under Routine Use. These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PMRS without the consent/ authorization of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or CMS grantees who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. Pursuant to agreements with CMS to assist another Federal or state agency, agency of a state government, or an agency established by state law to:
 - a. Contribute to projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services,
 - b. Contribute to the accuracy of CMS's proper payment of Medicare benefits,
 - c. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or
 - d. Assist Federal/state Medicaid programs which may require PMRS information for purposes related to this system.

3. To assist in making the individual physician-level performance measurement results available to Medicare beneficiaries, through a Web site and other forms of data dissemination, in order to promote more informed choices by Medicare beneficiaries among their Medicare coverage options.

4. To provide Chartered Value Exchanges (CVE) and data aggregators with information that will assist in generating single or multi-payer

performance measurement results that will assist beneficiaries in making informed choices among individual physicians, practitioners and providers of services; enable consumers to compare the quality and price of health care services; and assist in providing transparency in health care at the local level if CMS:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Is of sufficient importance to warrant the effect on and/or risk to the privacy of the individual that additional exposure of the record might bring, and

(2) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the recipient of the information to establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record,

d. Make no further use or disclosure of the record except:

(1) For use in another project providing transparency in health care, under these same conditions, and with written authorization of CMS;

(2) When required by law.

e. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions. CVEs and data aggregators should complete a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

5. To assist individual physicians, practitioners, providers of services, suppliers, laboratories, and other health care professionals who are participating in health care transparency projects.

6. To assist an individual or organization with projects that provide transparency in health care on a broad scale, enabling consumers to compare the quality and price of health care services; or for research, evaluation, and epidemiological projects related to the prevention of disease or disability; restoration or maintenance of health or for payment purposes if CMS:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect and/or risk on the

privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the recipient of the information to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) For disclosure to a properly identified person, for purposes of providing transparency in health care enabling consumers to compare the quality and price of health care services so that they can make informed choices among individual physicians, practitioners and providers of services;

(b) In emergency circumstances affecting the health or safety of any individual;

(c) For use in another research project, under these same conditions, and with written authorization of CMS;

(d) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(e) When required by law.

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions. Researchers should complete a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

7. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

8. To support the Department of Justice (DOJ), court, or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

9. To assist a CMS contractor (including, but not limited to MACs, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such program.

10. To assist another Federal agency or an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such programs.

B. Additional Circumstances Affecting Routine Use Disclosures. To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR Parts 160 and 164, Subparts A and E) 65 Fed. Reg. 82462 (12-28-00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." (See 45 CFR 164-512(a)(1)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on both tape cartridges (magnetic storage media) and

in a DB2 relational database management environment (DASD data storage media).

RETRIEVABILITY:

Information is most frequently retrieved by HICN, provider number (facility, physician, IDs), service dates, and beneficiary state code.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A-130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained with identifiers for all transactions after they are entered into the system for a period of 20 years. Records are housed in both active and archival files. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the Department of Justice.

SYSTEM MANAGER AND ADDRESS:

Director, Quality Measurement and Health Assessment Group, Office of

Clinical Standards and Quality, CMS, Room C1-23-14, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

NOTIFICATION PROCEDURE:

For purpose of notification, the subject individual should write to the system manager who will require the system name, and the retrieval selection criteria (e.g., HICN, Provider number, etc.).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Medicare Beneficiary Database (09-70-0536), National Claims History File (09-70-0558), and private physicians, private providers, laboratories, other providers and suppliers who are participating in health care transparency projects sponsored by the Agency.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7-17907 Filed 9-11-07; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N-0230]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Information From United States Processors That Export to the European Community

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of

information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 12, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910-0320. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Information From U.S. Processors That Export to the European Community—(OMB Control Number 0910-0320)—Extension

The European Community (EC) is a group of 27 European countries that have agreed to harmonize their commodity requirements to facilitate commerce among member states. EC legislation for intra-EC trade has been extended to trade with non-EC countries, including the United States. For certain food products, including those listed in this document, EC legislation requires assurances from the responsible authority of the country of origin that the processor of the food is in compliance with applicable regulatory requirements.

FDA requests information from processors that export certain animal-derived products (e.g., shell eggs, dairy products, game meat, game meat products, animal casings, and gelatin) to the EC. FDA uses the information to maintain lists of processors that have demonstrated current compliance with U.S. requirements and provides the lists to the EC quarterly. Inclusion on the list is voluntary. EC member countries refer to the lists at ports of entry to verify that products offered for importation to the EC from the United States are from processors that meet U.S. regulatory requirements. Products processed by firms not on the lists are subject to

detention and possible refusal at the port. FDA requests the following information from each processor seeking to be included on the lists:

1. Business name and address;
2. Name and telephone number of person designated as business contact;
3. Lists of products presently being shipped to the EC and those intended to be shipped in the next 6 months;

4. Name and address of manufacturing plants for each product; and

5. Names and affiliations of any Federal, State, or local governmental agencies that inspect the plant, government-assigned plant identifier such as plant number, and last date of inspection.

In the **Federal Register** of June 21, 2007 (72 FR 34256), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

Products	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Shell Eggs	10	1	10	.25	3
Dairy	120	1	120	.25	30
Game Meat and Meat Products	5	1	5	.25	1
Animal Casings	5	1	5	.25	1
Gelatin	3	1	3	.25	1
Collagen	3	1	3	.25	1
Total					37

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimate on the responses received over the past 3 years. We estimate that the annual reporting burden would be approximately 37 hours. The time to respond to the questions should take approximately 15 minutes using any of the technologies available to transmit the information. All of the information asked for should be readily available. No record retention is required. In previous years, FDA estimated that the agency's communication with trade associations and states resulted in a reporting burden of 520 hours. FDA no longer receives information from trade associations and states under this program. Accordingly, the proposed annual burden for this information collection has been reduced by 520 hours. Therefore, the proposed annual burden for this information collection is 37 hours.

Dated: September 6, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-18033 Filed 9-11-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Cardiovascular and Renal Drugs Advisory Committee. This meeting was announced in the **Federal Register** of August 14, 2007 (72 FR 45435). The amendment is being made to reflect a change in the *Date and Time* and *Agenda* portions of the meeting. There are no other changes.

FOR FURTHER INFORMATION CONTACT:

Cathy A. Miller, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5630 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, FAX: 301-827-6776, e-mail:

Cathy.Miller1@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512533. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 2007, FDA announced that a meeting of the Cardiovascular and Renal Drugs Advisory Committee would be held on October 16 and 17, 2007.

On page 45435, in the second column, the *Date and Time* portion of the document is amended to read as follows:

Date and Time: The meeting will be held on October 16, 2007, from 8 a.m. to 5 p.m.

On page 45435, in the third column, the *Agenda* portion of the document is amended to read as follows:

Agenda: On October 16, 2007, the committee will discuss regulatory considerations for extending the use of phosphate binders from the dialysis population (where they are approved) to the pre-dialysis population (where no products are approved). The committee will hear presentations on this topic from Shire Development, Genzyme Corp., and Fresenius Medical Care.

Dated: September 5, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7-18031 Filed 9-11-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 10 and 11, 2007, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy, Gaithersburg, MD.

Contact Person: James Swink, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240-276-4179, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512625. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On October 10, 2007, the committee will discuss; make recommendations; and vote on a premarket approval application, sponsored by Medtronic, Inc., for the Endeavor Zotarolimus-Eluting Coronary Stent System, which is indicated for improving coronary luminal diameter in patients with ischemic heart disease due to de novo lesions of length \leq 27 millimeters (mm) in native coronary arteries with reference vessel diameters of \geq 2.5 mm to \leq 3.5 mm.

On October 11, 2007, the committee will discuss and make recommendations regarding clinical trial designs for carotid artery stenting

in patients not at high risk for adverse events from surgical revascularization.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: On October 10, 2007, from 8 a.m. to 6 p.m., and on October 11, 2007, from 10:15 a.m. to 6 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 26, 2007. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations on each day and for approximately 30 minutes near the end of the deliberations on each day. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 18, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 19, 2007.

Closed Presentation of Data: On October 11, 2007, from 8 a.m. to 10:15 a.m., the meeting will be closed to permit discussion and review of clinical trial design issues for carotid artery stents intended to reopen stenotic carotid arteries in the neck. Information regarding trial designs and actual experience in conducting ongoing trials is considered trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 240-276-8932, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/oc/advisory/default.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 5, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7-17983 Filed 9-11-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N-0226]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 018

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled "Modifications to the List of Recognized Standards, Recognition List Number: 018" (Recognition List Number: 018), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written or electronic comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies of "Modifications to the List of Recognized Standards, Recognition List Number: 018" to the Division of Small Manufacturers,

International and Consumer Assistance, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or FAX your request to 301-443-8818. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by e-mail: standards@cdrh.fda.hhs.gov. This document may also be accessed on FDA's Web site at <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfTopic/cdrhnew.cfm>. See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 018 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240-276-0533.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105-115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR

9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, are identified in table 1 of this document.

TABLE 1.

Federal Register Cite
October 16, 1998 (63 FR 55617)
July 12, 1999 (64 FR 37546)
November 15, 2000 (65 FR 69022)
May 7, 2001 (66 FR 23032)
January 14, 2002 (67 FR 1774)
October 2, 2002 (67 FR 61893)
April 28, 2003 (68 FR 22391)
March 8, 2004 (69 FR 10712)
June 18, 2004 (69 FR 34176)
October 4, 2004 (69 FR 59240)
May 27, 2005 (70 FR 30756)
November 8, 2005 (70 FR 67713)
March 31, 2006 (71 FR 16313)
June 23, 2006 (71 FR 36121)
November 3, 2006 (71 FR 64718)
May 21, 2007 (72 FR 28500)

These notices describe the addition, withdrawal, and revision of certain

standards recognized by FDA. The agency maintains "hypertext markup language" (HTML) and "portable document format" (PDF) versions of the list of "FDA Recognized Consensus Standards." Both versions are publicly accessible at the agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 018

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the agency's searchable database. FDA will use the term "Recognition List Number: 018" to identify these current modifications.

In table 2 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 2.

Old Item No.	Standard	Change	Replacement Item No.
A. Anesthesia			
3	ASTM F1161-88, Standard Specification for Minimum Performance and Safety Requirements for Components and Systems of Anesthesia Gas Machines	Withdrawn	
15	ISO 5361-4:1987, Tracheal Tubes—Part 4: Cole Type	Contact person	
35	ISO 5361:1999, Anaesthetic and Respiratory Equipment—Tracheal Tubes and Connectors	Contact person	
36	ISO 5366-3:2001, Anaesthetic and Respiratory Equipment—Tracheostomy Tubes—Part 3: Pediatric Tracheostomy Tubes	Contact person	
42	ISO 5360:2006, Anaesthetic Vaporizers—Agent Specific Filling Systems	Withdrawn and replaced with newer version	74

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
43	ISO 5362:2006, Anaesthetic Reservoir Bags	Withdrawn and replaced with newer version	75
44	ISO 5366-1:2000, Anaesthetic and Respiratory Equipment—Tracheostomy Tubes—Part 1: Tubes and Connectors for Use in Adults	Contact person	
46	ISO 5367:2000, Breathing Tubes Intended for Use With Anaesthetic Apparatus and Ventilators	Contact person	
50	ASTM F920-93(1999): Standard Specification for Minimum Performance and Safety Requirements for Resuscitators Intended for Use with Humans	Withdrawn	
55	ASTM F1054-01: Standard Specification for Conical Fittings	Withdrawn	
61	IEC 60601-2-13(2003-05), Medical Electrical Equipment—Part 2-13: Particular Requirements for the Safety and Essential Performance of Anaesthetic Systems	Contact person	
62	ISO 5356-1:2004, Anaesthetic and Respiratory Equipment—Conical Connectors: Part 1: Cones and Sockets	Contact person	
B. Biocompatibility			
21	AAMI / ANSI / ISO 10993-11:1993, Biological Evaluation of Medical Devices—Part 11: Tests for Systemic Toxicity	Contact person	
63	AAMI / ANSI / ISO 10993-6:1995/(R) 2001, Biological Evaluation of Medical Devices—Part 6: Test for Local Effects After Implantation	Contact person	
64	AAMI / ANSI / ISO 10993-5:1999, Biological Evaluation of Medical Devices—Part 5: Tests for In Vitro Cytotoxicity	Contact person	
68	ASTM F719-81(2002)e1: Standard Practice for Testing Biomaterials in Rabbits for Primary Skin Irritation	Contact person	
70	ASTM F750-87 (2002)e1: Standard Practice for Evaluating Material Extracts by Systemic Injection in the Mouse	Contact person	
71	ASTM F1408-02e1: Standard Practice for Subcutaneous Screening Test for Implant Materials	Contact person	
83	ASTM E1262-88(2003): Standard Guide for Performance of the Chinese Hamster Ovary Cell/Hypoxanthine Guanine Phosphoribosyl Transferase Gene Mutation Assay	Contact person	
84	ASTM E1263-97(2003): Standard Guide for Conduct of Micronucleus Assays in Mammalian Bone Marrow Erythrocytes	Contact person	
85	ASTM E1280-97 (2003): Standard Guide for Performing the Mouse Lymphoma Assay for Mammalian Cell Mutagenicity	Contact person	
87	AAMI / ANSI / ISO 10993-10:2002, Biological Evaluation of Medical Devices—Part 10: Tests for Irritation and Sensitization	Contact person	
88	AAMI / ANSI / ISO 10993-12: 2002(E), Biological Evaluation of Medical Devices—Part 12: Sample Preparation and Reference materials	Contact person	
89	ASTM F749-98 (2002)e2: Standard Practice for Evaluating Material Extracts by Intracutaneous Injection in the Rabbit	Contact person	
90	ASTM E1397-91(2003): Standard Practice for the in vitro Rat Hepatocyte DNA Repair Assay	Contact person	
91	ASTM E1398-91(2003): Standard Practice for the in vivo Rat Hepatocyte DNA Repair Assay	Contact person	
92	ASTM F748-04: Standard Practice for Selecting Generic Biological Test Methods for Materials and Devices	Contact person	
93	ASTM F763-04: Standard Practice for Short-Term Screening of Implant Materials	Contact person	

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
94	ASTM F981–04: Standard Practice for Assessment of Compatibility of Biomaterials for Surgical Implants with Respect to Effect of Materials on Muscle and Bone	Contact person	
97	ASTM F1983–99(2003): Standard Practice for Assessment of Compatibility of Absorbable/Resorbable Biomaterials for Implant Applications	Contact person	
98	AAMI / ANSI / ISO 10993–1:2003(E), Biological evaluation of medical devices—Part 1: Evaluation and Testing	Contact person	
99	ASTM F1904–98(2003): Standard Practice for Testing the Biological Responses to Particles In Vivo	Contact person	
100	ASTM E1372–95(2003): Standard Test Method for Conducting a 90–Day Oral Toxicity Study in Rats	Contact person	
106	ASTM F619–03: Standard Practice for Extraction of Medical Plastics	Contact person	
109	USP 29–NF21 Biological Tests <87>, Biological Reactivity Test, In Vitro—Direct Contact Test	Contact person	
110	USP 29–NF21 Biological Tests <87>, Biological Reactivity Test, In Vitro—Elution Test	Contact person	
111	USP 29–NF21 Biological Tests <88>, Biological Reactivity Tests, In Vivo, Procedure—Preparation of Sample	Contact person	
112	USP 29–NF21 Biological Tests <88>, Biological Reactivity Test, In Vitro, Classification of Plastics—Intracutaneous Test	Contact person	
113	USP 29–NF21 Biological Tests <88>, Biological Reactivity Tests, In Vivo, Classification of Plastics—Systemic Injection Test	Contact person	
114	ASTM F1877–05: Standard Practice for Characterization of Particles	Contact person	
115	ASTM F895–84(2006): Standard Test Method for Agar Diffusion cell Culture Screening for Cytotoxicity	Contact person	
116	ASTM F1439–03: Standard Guide for Performance of Lifetime Bioassay for the Tumorigenic Potential of Implant Materials	Contact person	
C. General			
2	IEC 60601-1, Medical electrical equipment — Part 1: General requirements for safety	Withdrawn	
11	ISO 2859–1:1999: Sampling Procedures for Inspection By Attributes—Part 1: Sampling Schemes Indexed by Acceptance Quality Limit (AQL) for Lot-by-Lot Inspection	Withdrawn and replaced with newer year version	37
14	ANSI/ASQ Z1.4–2003: Sampling Procedures and Tables for Inspection by Attributes	Withdrawn and replaced with newer year version	38
22	ISO 2768–1: 1989, General Tolerances—Part 1: Tolerances for Linear and Angular Dimensions Without Individual Tolerance Indications	Contact name	
23	ISO 2768–2: 1989, General Tolerances—Part 2: Geometrical Tolerances for Features Without Individual Tolerance Indications	Contact name	
24	IEC 60812, edition 2.0: 2006–01, Analysis Technique for System Reliability—Procedure for Failure Mode and Effects Analysis	Withdrawn and replaced with newer year version	39
26	ISO 14971:2007: Medical devices—Application of Risk Management to Medical Devices	Withdrawn and replaced with newer year version	40
28	IEC 60601–1–2, (Second Edition, 2001), Medical Electrical Equipment—Part 1–2: General Requirements for Safety; Electromagnetic Compatibility—Requirements and Tests	Extent of recognition	

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
30	AAMI/ANSI/IEC 60601–1–2, Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests. (The AAMI/ANSI/IEC 60601–1–2:2001 is the U.S. version of IEC 60601–1–2:2001 with identical requirements for electromagnetic compatibility (EMC) of medical electrical equipment.)	Title change Type of standard Extent of recognition	
34	IEC 60601–1–2, Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests (Edition 2:2001 with Amendment 1:2004; Edition 2.1 (Edition 2:2001 consolidated with Amendment 1:2004))	Extent of recognition	
35	AAMI/ANSI/IEC 60601–1–2, Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests (Edition 2:2001 with Amendment 1:2004) (AAMI/ANSI/IEC 60601–1–2:2001 is the U.S. version of IEC 60601–1–2:2001, with identical requirements for electromagnetic compatibility (EMC) of medical electrical equipment.)	Extent of recognition	
D. General Hospital/ General Plastic Surgery			
18	ISO 8537:1991 Sterile Single-use Syringes, With or Without Needle, for Insulin	Withdrawn duplicate	
20	ISO 10555–1–1995 Sterile, Single-use Intravascular Catheters—Part 1: General Requirements	Withdrawn duplicate	
46	IEC 60601–2–2 2006 Medical Electrical Equipment—Part 2–2: Particular Requirements for the Safety of High Frequency Surgical Equipment	Withdrawn and replaced with newer version	197
69	ISO 9626–1991: Stainless Steel Needle Tubing for the Manufacture of Medical Devices	Withdrawn duplicate	
72	ISO 10555–5 1996–06–15 Sterile, Single-use Intravascular Catheters—Part 5: Over-needle Peripheral Catheters	Withdrawn duplicate	
96	ASTM F2101–07 Standard Test Method for Evaluating the Bacterial Filtration Efficiency (BFE) of Medical Face Mask Materials, Using a Biological Aerosol of Staphylococcus Aureus	Withdrawn and replaced with newer version	199
113	ASTM F2100–07 Standard Specification for Performance of Materials Used in Medical Face Masks	Withdrawn and replaced with newer version	198
108	ASTM F754–00 Standard Specification for Implantable Polytetrafluoroethylene (PTFE) Polymer Fabricated in Sheet, Tube and Rod Shapes	Transferred to materials	
109	ASTM F881–94(2006) Standard Specification for Silicone Elastomer Facial Implants	Withdrawn and replaced with newer version	185
128	ASTM F1670–07 Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood	Withdrawn and replaced with newer version	186
130	ASTM F1671–07 Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Blood-Borne Pathogens Using Phi-X174 Bacteriophage Penetration as a Test System	Withdrawn and replaced with newer version	187
151	USP 30:2007 Nonabsorbable Surgical Suture	Withdrawn and replaced with newer version	188
152	USP 30<11>: 2007 Sterile Sodium Chloride for Irrigation	Withdrawn and replaced with newer version	189
153	USP 30:2007 Absorbable Surgical Suture	Withdrawn and replaced with newer version	190
154	USP 30<881>:2007 Tensile Strength	Withdrawn and replaced with newer version	191
155	USP 30<861>:2007 Sutures—Diameter	Withdrawn and replaced with newer version	192
156	USP 30<871>:2007 Sutures Needle Attachment	Withdrawn and replaced with newer version	193

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
157	USP 30<11>: 2007 Sterile Water for Irrigation	Withdrawn and replaced with newer version	194
158	USP 30<11>: 2007 Heparin Lock Flush Solution	Withdrawn and replaced with newer version	195
159	USP 30<11>: 2007 Sodium Chloride Injection	Withdrawn and replaced with newer version	196
181	ASTM F1862–07: Standard Test Method for Resistance of Medical Face Masks to Penetration by Synthetic Blood (Horizontal Projection of Fixed Volume at a Known Velocity)	Withdrawn and replaced with newer version	184
E. Materials			
2	ASTM F75–07: Standard Specification for Cobalt–28 Chromium–6 Molybdenum Alloy Castings and Casting Alloy for Surgical Implants (UNS R30075)	Withdrawn and replaced with newer year version	137
15	ASTM F745–07: Standard Specification for 18 Chromium–12.5 Nickel–2.5 Molybdenum Stainless Steel for Cast and Solution-Annealed Surgical Implant Applications	Withdrawn and replaced with newer year version	138
26	ASTM F1314–07: Standard Specification for Wrought Nitrogen Strengthened 22 Chromium–13 Nickel–5 Manganese–2.5 Molybdenum Stainless Steel Alloy Bar and Wire for Surgical Implants (UNS S20910)	Withdrawn and replaced with newer year version	139
37	ASTM F1813–06: Standard Specification for Wrought Titanium–12 Molybdenum–6 Zirconium–2 Iron Alloy for Surgical Implant (UNS R58120)	Withdrawn and replaced with newer year version	140
43	ASTM F2146–07: Standard Specification for Wrought Titanium–3Aluminum–2.5Vanadium Alloy Seamless Tubing for Surgical Implant Applications (UNS R56320)	Withdrawn and replaced with newer year version	141
67	ISO 7153–1:1991/Amd. 1:1999, Surgical Instruments—Metallic Materials—Part 1: Stainless Steel	Contact person	
87	ASTM F1978–00(2007)e2: Standard Test Method for Measuring Abrasion Resistance of Metallic Thermal Spray Coatings by Using the Taber Abraser	Withdrawn and replaced with newer year version	142
89	ASTM F1873–98: Standard Specification for High-Purity Dense Yttria Tetragonal Zirconium Oxide Polycrystal (Y-TZP) for Surgical Implant Applications	Withdrawn	
106	ASTM F648–07: Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants	Withdrawn and replaced with newer year version	143
128	ASTM F2213–06: Standard Test Method for Measurement of Magnetically Induced Torque on Medical Devices in the Magnetic Resonance Environment	Title	
GH/GPS 108	ASTM F754–00: Standard Specification for Implantable Polytetrafluoroethylene (PTFE) Polymer Fabricated in Sheet, Tube, and Rod Shapes	Transferred from GH/GPS to Materials	144
F. OB-GYN/Gastroenterology			
20	ISO 8600–3:1997 Amendment 1 2003, Optics and Optical Instruments—Medical Endoscopes and Endoscopic Accessories Part 3: Determination of Field of View and Direction of View of Endoscopes with Optics	Withdraw duplicate	
32	ASTM D3492–03 Standard Specification for Rubber Contraceptives (Male Condoms)	Extent of recognition, processes impacted, relevant guidance	
33	ASTM F623–99(2006) Standard Performance Specification for Foley Catheter	Withdrawn and replaced with newer version	44
34	ISO 4074:2002/Cor.1:2003(E) Natural Latex Rubber Condoms—Requirements and Test Methods, Technical Corrigendum 1	Extent of recognition, relevant guidance	
G. Ophthalmic			
1	ISO 9338:1996 Optics and Optical Instruments—Contact Lenses—Determination of the Diameters	Withdrawn	

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
2	ISO 9339-1:1996 Optics and Optical Instruments—Contact Lenses—Determination of the Thickness—Part 1: Rigid Contact Lenses	Withdrawn	
4	ISO 9341:1996 Optics and Optical Instruments—Contact Lenses—Determination of Inclusions and Surface Imperfections for Rigid Contact Lenses	Withdrawn	
7	ISO 9913-1:1996 Optics and Optical Instruments—Contact Lenses—Part 1: Determination of Oxygen Permeability and Transmissibility with the FATT Method	Withdrawn	
8	ISO 10338:1996 Optics and Optical Instruments—Contact Lenses—Determination of Curvature	Withdrawn	
9	ISO 10339:1997 Ophthalmic Optics—Contact Lenses—Determination of Water Content of Hydrogel Lenses	Withdrawn	
10	ISO 10340:1995 Optics and Optical Instruments—Contact Lenses—Method for Determining the Extractable Substances	Withdrawn	
11	ISO 10344:1996 Optics and Optical Instruments—Contact Lenses—Saline Solution for Contact Lens Testing	Withdrawn	
16	ISO 9913-2:2000 Optics and Optical Instruments—Contact Lenses—Part 2: Determination of Oxygen Permeability and Transmissibility by the Coulometric Method	Withdrawn	
17	ISO 10939:2007 Ophthalmic Instruments—Slit-lamp Microscopes	Withdrawn and replaced with newer version	35
19	ISO 11539:1999 Ophthalmic Optics—Contact Lenses—Classification of Contact Lenses and Contact Lens Materials	Withdrawn	
22	ISO 11979-3:2006 Ophthalmic Implants—Intraocular Lenses—Part 3: Mechanical Properties and Test Methods	Withdrawn and replaced with newer version	36
25	ISO 12865:2006 Ophthalmic Instruments—Retinoscopes	Withdrawn and replaced with newer version	39
27	ISO 11979-7:2006 Ophthalmic Implants—Intraocular Lenses—Part 7: Clinical Investigations	Withdrawn and replaced with newer version	41
H. Orthopedic/ Physical Medicine			
121	ISO 7207-1:1994, Implants for Surgery—Components for Partial and Total Knee Joint Prostheses—Part 1: Classification, Definitions and Designation of Dimensions	Withdrawn	
I. Radiology			
57 & 132	IEC 60731 (1997), (2002) Amendment 1, Medical Electrical Equipment—Dosimeters with Ionization Chambers as Used in Radiotherapy	Withdrawn and combine	162
59	IEC 61168:1993, Radiotherapy Simulators—Functional Performance Characteristics	Contact person	
63	IEC 60601-2-43—Ed. 1.0, Medical Electrical Equipment—Part 2-43: Particular Requirements for the Safety of X-ray Equipment for Interventional Procedures	Contact person	
91	IEC 60601-2-8 (1997-08), Amendment 1—Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Therapeutic X-ray Equipment Operating in the Range of 10 kV to 1 MV	Withdrawn duplicate	
103	ANSI / IESNA RP-27.3-1996, Recommended Practice for Photobiological Safety for Lamps—Risk Group Classification and Labeling	Title	
130 & 148	IEC 60601-2-37 (2004), (2005) Amendment 2, Medical Electrical Equipment—Part 2-37: Particular Requirements for the Safety of Ultrasonic Medical Diagnostic and Monitoring Equipment	Withdrawn and combine	164
131	IEC 61217 2002:, Radiotherapy Equipment—Coordinates, Movements, and Scales Consolidated Ed. 1.1	Contact person	

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
133	IEC 60601–2–11 (1997), (2004) Amendment 1, Medical Electrical Equipment—Part 2–11: Particular Requirements for the Safety of gamma Beam Therapy Equipment	Title	
145	IEC 61674 (1997), (2002) Amendment 1, Medical Electrical Equipment—Dosimeters with Ionization Chambers and/or Semi-conductor Detectors as Used in X-ray Diagnostic Imaging	Contact person	
J. Sterility			
28	ANSI/AAMI/ISO 11737–1:2006, Sterilization of Medical Devices—Microbiological Methods—Part 1: Determination of a Population of Microorganisms on Products, 2nd ed.	Withdrawn and replaced with newer version	227
47	ANSI/AAMI ST37:1996, Flash Sterilization: Steam Sterilization of Patient Care Items for Immediate Use	Withdrawn	
49	ANSI/AAMI ST41:1999(R) 2005, Ethylene Oxide Sterilization in Health Care Facilities: Safety and Effectiveness	Reaffirmation	
50	ANSI/AAMI ST42:1998, Steam Sterilization and Sterility Assurance Using Table-top Sterilizers in Office-based, Ambulatory-care Medical, Surgical, and Dental Facilities.	Withdrawn	
52	ANSI/AAMI ST59:1999, Sterilization of Health Care Products—Biological Indicators—Part 1: General	Withdrawn	
53	ANSI/AAMI ST66:1996, Sterilization of Health Care Products—Chemical Indicators—Part 2: Indicators for Air Removal Test Sheets and Packs	Contact person	
54	ANSI/AAMI/ISO 11737–2:1998, Sterilization of Medical Devices—Microbiological Methods—Part 2: Tests of Sterility Performed in the Validation of a Sterilization Process	Contact person	
60	ASTM F1327:1998, Standard Terminology Relating to Barrier Materials for Medical Packaging	Contact person	
63	ASTM F1886: 1998 (2004), Standard Test Method for Determining Integrity of Seals for Medical Packaging by Visual Inspection	Contact person	
64	ASTM F1929:1998 (2004), Standard Test Method for Detecting Seal Leaks in Porous Medical Packaging by Dye Penetration	Contact person	
72	ANSI/AAMI ST33:1996, Guidelines for the Selection and Use of Reusable Rigid Sterilization Container Systems for Ethylene Oxide Sterilization and Steam Sterilization in Health Care Facilities	Withdrawn	
75	ANSI/AAMI/ISO 11137:1994, Sterilization of Health Care Products—Requirements for Validation and Routine Control—Radiation Sterilization and ANSI/AAMI/ISO 11137:1994 (Amendment 1:2002)	Withdrawn	
77	ANSI/AAMI ST24:1999(R) 2005, Automatic, General Purpose Ethylene Oxide Sterilizers and Ethylene Oxide Sterilant Sources Intended for use in Health Care Facilities, 3rd ed.	Reaffirmation	
86	ASTM F1980:2002, Standard Guide for Accelerated Aging of Sterile Medical Device Packages	Contact person	
88	ANSI/AAMI/ISO 14937:2000, Sterilization of Health Care Products—General Requirements for Characterization of a Sterilizing Agent and the Development, Validation, and Routine Control of a Sterilization Process for Medical Devices	Extent of recognition	
90	ASTM F2095–01, Standard Test Methods for Pressure Decay Leak Test for Non-porous Flexible Packages With and Without Restraining Plates	Contact person	
105	ANSI/AAMI ST46:2002, Steam Sterilization and Sterility Assurance in Health Care Facilities	Withdrawn	
116	ANSI/AAMI ST72:2002, Bacterial Endotoxins—Test Methodologies, Routine Monitoring, and Alternatives to Batch Testing	Contact person	

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
117	ANSI/AAMI ST35:2003, Safe Handling and Biological Decontamination of Reusable Medical Devices in Health Care Facilities and in Nonclinical Settings	Extent of recognition	
120	ASTM D3078:2002, Standard Test Method for Determination of Leaks in Flexible Packaging by Bubble Emission	Contact person	
123	ASTM F2096–04, Standard Test Method for Detecting Gross Leaks in Medical Packaging by Internal Pressurization (Bubble Test)	Contact person	
134	ANSI/AAMI ST44:2002, Resistometers Used for Characterizing the Performance of Biological and Chemical Indicators	Withdrawn	
135	ANSI/AAMI ST63:2002, Sterilization of Health Care Products—Requirements for the Development, Validation and Routine Control of an Industrial Sterilization Process for Medical Devices—Dry heat	Extent of recognition	
136	ANSI/AAMI ST67:2003, Sterilization of Health Care Products—Requirements for Products Labeled 'sterile'	Contact person	
137	ANSI/AAMI/ISO TIR 11139:2006, Sterilization of Health Care Products—Vocabulary	Withdrawn and replaced with newer version	221
144	ASTM F2203–02e1, Standard Test Method for Linear Measurement Using Precision Steel Rule	Contact person	
145	ASTM F2217–02, Standard Practice for Coating/Adhesive Weight Determination	Contact person	
146	ASTM F2227–02, Standard Test Method of Leaks in Non-sealed and Empty Medical Packaging Trays by CO2 Tracer Gas Method	Contact person	
147	ASTM F2228–02, Standard Test Method for Non-Destructive Detection of Leaks in Medical Packaging Which Incorporates Porous Barrier Material by CO2 Tracer Gas Method	Contact person	
148	ASTM F2250–03, Standard Practice for Evaluation of Chemical Resistance of Printed Inks and Coatings on Flexible Packaging Materials	Contact person	
149	ASTM F2251–03e1, Standard Test Method for Thickness Measurement of Flexible Packaging Material	Contact person	
150	ASTM F2252–03, Standard Practice for Evaluating Ink or Coating Adhesion to Flexible Packaging Materials Using Tape	Contact person	
163	ANSI/AAMI/ISO 11737–3:2004, Sterilization of Medical Devices—Microbiological Methods—Part 3: Guidance on Evaluation and Interpretation of Bioburden Data	Withdrawn	
167	ASTM F2097–05, Standard Guide for Design and Evaluation of Primary Packaging for Medical Products	Contact person	
168	ASTM F2338–05, Standard Test Method for Nondestructive Detection of Leaks in Packages by Vacuum Decay Method	Contact person	
169	ASTM F2391–05, Standard Test Method for Measuring Package and Seal Integrity Using Helium as Tracer Gas	Contact person	
170	ASTM F2475–05, Standard Guide for Biocompatibility Evaluation of Medical Device Packaging Materials	Contact person	
171	ANSI/AAMI/ISO 15882:2003, Chemical Indicators—Guidance on the Selection, Use, and Interpretation of Results	Contact person	
172	AOAC 6.2.01:2006, Official Method 955.14, Testing Disinfectants Against Salmonella choleraesuis, Use-Dilution Method	Withdrawn and replaced with newer version	211
173	AOAC 6.2.02:2006, Official Method 991.47, Testing Disinfectants Against Salmonella choleraesuis, Hard Surface Carrier Test Method	Withdrawn and replaced with newer version	212
174	AOAC 6.2.03:2006, Official Method 991.48, Testing Disinfectants Against Staphylococcus aureus, Hard Surface Carrier Test Method	Withdrawn and replaced with newer version	213

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
175	AOAC 6.2.04:2006, Official Method 955.15, Testing Disinfectants Against Staphylococcus aureus, Use-Dilution Method	Withdrawn and replaced with newer version	214
176	AOAC 6.2.05:2006, Official Method 991.49, Testing Disinfectants Against Pseudomonas aeruginosa, Hard Surface Carrier Test Method	Withdrawn and replaced with newer version	215
177	AOAC 6.2.06:2006, Official Method 964.02, Testing Disinfectants Against Pseudomonas aeruginosa, Use-Dilution Method	Withdrawn and replaced with newer version	216
178	AOAC 6.3.02:2006, Official Method 955.17, Fungicidal Activity of Disinfectants Using Trichophyton mentagrophytes	Withdrawn and replaced with newer version	217
179	AOAC 6.3.05:2006, Official Method 966.04, Sporicidal Activity of Disinfectants, Method I	Withdrawn and replaced with newer version	218
180	AOAC 6.3.06:2006, Official Method 965.12, Tuberculocidal Activity of Disinfectants	Withdrawn and replaced with newer version	219
181	ANSI/AAMI ST58:2005, Chemical Sterilization and High-Level Disinfection in Health Care Facilities	Title, Devices affected and Relevant guidance	
182	USP 30:2007, Biological Indicator for Dry-Heat Sterilization, Paper Carrier	Withdrawn and replaced with newer version	202
183	USP 30:2007, Biological Indicator for Ethylene Oxide Sterilization, Paper Carrier	Withdrawn and replaced with newer version	203
184	USP 30:2007, Biological Indicator for Steam Sterilization, Paper Carrier	Withdrawn and replaced with newer version	204
185	USP 30:2007, <61> Microbial Limits Test	Withdrawn and replaced with newer version	205
186	USP 30:2007, <71> Microbiological Tests, Sterility Tests	Withdrawn and replaced with newer version	206
187	USP 30:2007, <85> Biological Tests and Assays, Bacterial Endotoxin Test (LAL)	Withdrawn and replaced with newer version	207
188	USP 30:2007, <151> Pyrogen Test (USP Rabbit Test)	Withdrawn and replaced with newer version	208
189	USP 30:2007, <161> Transfusion and Infusion Assemblies and Similar Medical Devices	Withdrawn and replaced with newer version	209
190	USP 30:2007, Biological Indicator for Steam Sterilization, Self-Contained	Withdrawn and replaced with newer version	210
193	ANSI/AAMI/ISO 11607–1:2006, Packaging for Terminally Sterilized Medical Devices—Part 1: Requirements for Materials, Sterile Barrier Systems and Packaging Systems, 3rd ed.	Contact person	
194	ANSI/AAMI/ISO 11607–2:2006, Packaging for Terminally Sterilized Medical Devices—Part 2: Validation Requirements for Forming, Sealing and Assembly Processes, 1st ed.	Contact person	
196	ASTM F1140–2005, Standard Test Methods for Internal Pressurization Failure Resistance of Unrestrained Packages for Medical Applications	Contact person	
197	ASTM F1608:2004, Standard Test Method for Microbial Ranking of Porous Packaging Materials (Exposure Chamber Method)	Contact person	
198	ASTM F2054–05, Standard Test Method for Burst Testing of Flexible Package Seals Using Internal Air Pressurization Within Restraining Plates	Contact person	
199	ASTM D4169–05, Standard Practice for Performance Testing of Shipping Containers and Systems	Contact person	
200	ASTM F88–2005, Standard Test Method for Seal Strength of Flexible Barrier Materials	Contact person	

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
K. Tissue Engineering			
3	ASTM F2212–02(2007)e1, Standard Guide for Characterization of Type I Collagen as Starting Material for Surgical Implants and Substrates for Tissue Engineered Medical Products (TEMPs)	Withdrawn and replaced with newer version	11

III. Listing of New Entries

In table 3 of this document, FDA provides the listing of new entries and

consensus standards added as modifications to the list of recognized

standards under Recognition List Number: 018.

TABLE 3.

Item No.	Title of Standard	Reference No. and Date
A. Anesthesia		
72	Lung Ventilators for Medical Use—Particular Requirements for Basic Safety and Essential Performance—Part 5: Gas-powered Emergency Resuscitators	ISO 10651–5:2006
73	Lung Ventilators—Part 4: Particular Requirements for Operator Powered Resuscitators	ISO 10651–4:2002
B. Biocompatibility		
117	Biological Evaluation of Medical Devices—Part 3: Tests for Genotoxicity, Carcinogenicity, and Reproductive Toxicity	ANSI/AAMI/ISO 10993–3: 2003
C. Dental/ ENT		
144	Dentistry-Mercury and Alloys for Dental Amalgam	ISO 24234: 2004(E)
D. OB-GYN/Gastroenterology		
45	Standard Test Methods for Enteral Feeding Devices with a Retention Balloon	ASTM F2528–06
E. Ophthalmic		
42	Ophthalmic Implants—Intraocular lenses—Part 2: Optical Properties and Test Methods	ISO 11979–2:1999/Corrigendum1:2003
43	Ophthalmic Optics—Contact Lenses and Contact Lens Care Products—Determination of Physical Compatibility of Contact Lens Care Products with Contact Lenses	ISO 11981:1999/Corrigendum1:2005
45	Ophthalmic Optics—Contact Lenses—Part 2: Tolerances	ISO 18369–2:2006
46	Ophthalmic Optics—Contact Lenses—Part 3: Measurement Methods	ISO 18369–3:2006
48	Ophthalmic Implants—Intraocular Lenses—Part 5: Biocompatibility	ISO 11979–5:2006
49	Ophthalmic Implants—Intraocular Lenses—Part 9: Multifocal Intraocular Lenses	ISO 11979–9:2006
50	Ophthalmic implants—Intraocular lenses—Part 10: Phakic Intraocular Lenses	ISO 11979–10:2006
51	Ophthalmic Instruments—Fundamental Requirements and Test Methods Part 2: Light Hazard Protection	ISO 15004–2:2007
F. Radiology		
165	“Quality Control Manual” Template for Manufacturers of Displays and Workstations Labeled for Final Interpretation in Full-field Digital Mammography	NEMA XR 22–2006
166	“Quality Control Manual” Template for Manufacturers of Hardcopy Output Devices Labeled for Final Interpretation in Full-field Digital Mammography	NEMA XR 23–2006
G. Sterility		
201	Containment Devices for Reusable Medical Device Sterilization	ANSI/AAMI ST77:2006
220	Comprehensive Guide to Steam Sterilization and Sterility Assurance in Health Care Facilities	ANSI/AAMI ST79:2006

TABLE 3.—Continued

Item No.	Title of Standard	Reference No. and Date
222	Sterilization of Health Care Products—Biological and Chemical Indicators—Test Equipment	ANSI/AAMI/ISO 18472:2006
223	Sterilization of Health Care Products—Biological Indicators—Part 1: General Requirements	ANSI/AAMI/ISO 11138–1:2006
224	Sterilization of Health Care Products—Radiation—Part 1: Requirements for the Development, Validation and Routine Control of a Sterilization Process for Medical Devices	ANSI/AAMI/ISO 11137–1:2006
225	Sterilization of Health Care Products—Radiation—Part 2: Establishing the Sterilization Dose	ANSI/AAMI/ISO 11137–2:2006
226	Sterilization of Health Care Products—Radiation—Part 3: Guidance on Dosimetric Aspects	ANSI/AAMI/ISO 11137–3:2006
H. Tissue Engineering		
9	Standard Guide for Classification of Therapeutic Skin Substitutes	ASTM F2311–06
10	Standard Guide for <i>in vivo</i> Assessment of Implantable Devices Intended to Repair or Regenerate Articular Cartilage	ASTM F2451–05

IV. List of Recognized Standards

FDA maintains the agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Web site at <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfstandards/search.cfm>. FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (See **FOR FURTHER INFORMATION CONTACT**). To be properly considered such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing "Modification to the List of Recognized Standards, Recognition List Number: 018" will be available on the CDRH home page. You may access the CDRH home page at <http://www.fda.gov/cdrh>.

You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards" through the hyperlink at <http://www.fda.gov/cdrh/stdsprog.html>.

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfTopic/cdrhnew.cfm>.

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified

with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 018. These modifications to the list or recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: August 30, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–18021 Filed 9–11–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The Hispanic Community Health Study (HCHS)/ Study of Latinos (SOL)

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 11, 2007, pages 37789–37790, and allowed 60-days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may

not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Hispanic Community Health Study (HCHS)/ Study of Latinos (SOL).

Type of Information Collection Request: New Collection. *Need and Use of Information Collection:* The Hispanic Community Health Study (HCHS)/ Study of Latinos (SOL) will identify risk factors for cardiovascular and lung disease in Hispanic populations and determine the role of acculturation in the prevalence and development of these diseases. Hispanics, now the largest minority population in the US, are influenced by factors associated with immigration from different cultural

settings and environments, including changes in diet, activity, community support, working conditions, and health care access. This project is a multicenter, six-and-a-half year epidemiologic study and will recruit 16,000 Hispanic men and women aged 18–74 in four community-based cohorts in Chicago, Miami, San Diego, and the Bronx. The study will also examine measures of obesity, physical activity, nutritional habits, diabetes, lung and sleep function, cognitive function, hearing, and dental conditions. Closely integrated with the research component will be a community and professional education component, with the goals of bringing the research results back to the community, improving recognition and control of risk factors, and attracting and training Hispanic researchers in epidemiology and population-based research.

Frequency of Response: The participants will be contacted annually. *Affected Public:* Individuals or households; Businesses or other for profit; Small businesses or organizations. *Type of Respondents:* Individuals or households; physicians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 39,844; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* 1.1; and *Estimated Total Annual Burden Hours Requested:* 44,688. The annualized cost to respondents is estimated at \$149,415, assuming respondents time at the rate of \$15 per hour and physician time at the rate of \$55 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE A.12.1.—ESTIMATE OF RESPONDENT BURDEN HCHS/SOL

Type of response	Number of respondents	Number of responses	Time per response (hours)	Burden (hours)
a. Recruitment contacts	22,369	1	0.08	1,790
b. Household enumeration	4,191	1	0.17	712
c. Telephone contact to set up appointment	6,667	1	0.08	533
d. Appointment Confirmation	6,667	1	0.08	533
e. CLINIC EXAM:				
e1. Procedures	5,333	1	3.67	19,572
e2. Questionnaires	5,333	1	2.75	14,666
f. Participant Telephone Interviews:				
24-hour Dietary Intake Recall	5,333	1	0.67	3,573
Follow-Up Call	5,333	1	0.50	2,667
Total, Participant	38,560	.....	.....	44,046
Non-participant components: ¹				
a. Physician, hospital and nursing home contacts for outcomes ascertainment (total = 1,254):				
Deaths	60	1	0.50	627
CHF	90	.....	.....	.....
Stroke	132	.....	.....	.....
CHD	650	.....	.....	.....
COPD	210	.....	.....	.....
Asthma	112	.....	.....	.....
b. Informant contact	30	1	0.50	15
Total, Participant and Non-Participant Components	39,844	.....	.....	44,688

¹ Annual burden is placed on physicians and health care providers and respondent relatives/informants through request for information which will help in the compilation of the number and nature of new fatal and non-fatal events.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice,

especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Larissa Aviles-Santa, Deputy Project Officer, NIH, NHLBI, 6701 Rockledge

Drive, MSC 7936, Bethesda, MD 20892–7936, or call non-toll-free number 301–435–1284 or E-mail your request, including your address to: AvilessantaL@NHLBI.NIH.GOV.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: September 7, 2007.

Mike Lauer,

Director, Division of Prevention and Population Sciences, NHLBI, National Institutes of Health.

Dated: September 7, 2007.

Suzanne Freeman,

Chief, FOIA, NHLBI, National Institutes of Health.

[FR Doc. E7–17986 Filed 9–11–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Cardiovascular Health Study (CHS)

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* The Cardiovascular Health Study. *Type of Information Request:* Reinstatement. (OMB No. 0925–0334). *Need and Use of Information Collection:* This study quantifies associations between conventional and hypothetical risk factors and coronary heart disease (CHD) and stroke in people age 65 years and older. The primary objectives include quantifying associations of risk factors with subclinical disease;

characterizing the natural history of CHD and stroke; and identifying factors associated with clinical course. The findings provide important information on cardiovascular disease in an older U.S. population and lead to early treatment of risk factors associated with disease and identification of factors that may be important in disease prevention. OBM clearance is being sought for data collection activities at only one of the four CHS field centers (the Pittsburgh field center), which are expected to end on May 31, 2008. Other data collection efforts in the CHS cohort are supported by various non-contract funding sources. *Frequency of response:* twice a year (participants) or once per cardiovascular disease event (proxies and physicians); *Affected public:* Individuals. *Types of Respondents:* Individuals recruited for CHS and their selected proxies and physicians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 556; *Estimated Number of Responses per respondent:* 1.2; and *Estimated Total Annual Burden Hours Requested:* 289. The annualized cost to respondents is estimated at: \$14,450.

There are no capital, operating, or maintenance costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent*	Average burden hours per response	Estimated total annual burden hours requested
Participants	346	1.2	0.5	208
Physicians	70	1.2	0.1	8
Participant proxies	121	1.2	0.5	73
Total	537	1.2	0.45	289

*Total for 3 years.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information will have practical utility; (2) The accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of data collection plans and instruments,

contact Dr. Jean Olson, Epidemiology Branch, Division of Prevention and Population Sciences, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, Suite 10018, MSC # 7936, Bethesda, MD 20892–7936, or call 301–435–0397 (non-toll-free number), or e-mail your request, including your address to: OlsonJ@nhlbi.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 29, 2007.

Mike Lauer,

Director, Division of Prevention and Population Sciences, NHLBI, National Institutes of Health.

Suzanne Freeman,

Chief, FOIA, NHLBI, National Institutes of Health.

[FR Doc. E7–18012 Filed 9–11–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

Office of AIDS Research Advisory Council.

The meeting will be open to the public, 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.

Name of Committee: Office of AIDS Research Advisory Council.

Date: October 24, 2007.

Time: 9 AM to 5:30 PM.

Agenda: The agenda will focus on the Prevention Research Challenges of HIV Infection in Racial and Ethnic Communities in the United States. An update will be provided on the OARAC Working Groups for Treatment and Prevention Guidelines.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Christina Brackna, Coordinator, Program Planning and Analysis, Office of Aids Research, Office of the Director, NIH, 5635 Fishers Lane MSC 9310, Suite 4000, Rockville, MD 20852, (301) 402-8655, cm53v@nih.gov.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

Information is also available on the Institute's/Center's home page: www.nih.gov/od/oar/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-4480 Filed 9-11-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Molecular Oncology P01.

Date: October 2-3, 2007.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8127, Bethesda, MD 20892-8328, 301-402-0996, smallm@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-4481 Filed 9-11-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group, Clinical Trials Review Committee.

Date: October 29-30, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Harbor Court Baltimore, 550 Light Street, Baltimore, MD 21202.

Contact Person: Patricia A. Haggerty, PhD, Section Chief, Clinical Studies and Training Scientific Review Group, Review Branch, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 7194, MSC 7924, Bethesda, MD 20892, 301/435-0288, haggertp@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: September 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-4479 Filed 9-11-07; 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 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: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee, MID October 2007.

Date: October 4, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, Rm. 3126, Bethesda, MD 20892-7616, 301-451-2671, aabbey@niaid.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: September 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-4478 Filed 9-11-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Initial Review Group, Biomedical Research Review Subcommittee.

Date: October 1, 2007.

Time: 8 a.m. to 6 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: Philippe Marmillot, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm 3045, Bethesda, MD 20892, 301-443-2861, marmillotp@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes on Health, HHS)

Dated: September 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-4482 Filed 9-11-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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)(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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, AA3 Study Section Conflict Review.

Date: November 7, 2007.

Time: 1:30 p.m. to 5 p.m.

Agenda: to review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, 3039,

Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Abraham P.; Bautista, PhD, Chief, Extramural Project Branch Review, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852, 301-443-9737, bautista@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS).

Dated: September 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-4483 Filed 9-11-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Developing Centers for Innovation in Services and Intervention Research (PAR-05-144).

Date: December 4, 2007.

Open: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Chief, Extramural Project Branch Review, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852. 301-443-9737, bautista@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-4484 Filed 9-11-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, Advanced Centers for Innovation in Services and Interventions Research.

Date: October 19, 2007.

Time: 2:30 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington, 1919 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, 301-443-0004, sechu@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Translational.

Date: October 31, 2007.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of

Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892-9606, 301-443-7861, dsommers@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Eating Disorders.

Date: November 8, 2007.

Time: 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892-9606, 301-443-7861, dsommers@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ACISIR/DCISIR.

Date: November 16, 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: Mary C. Blehar, Scientific Review Administrator, Office of the Director, Neuroscience Center, 6001 Executive Blvd., Room 7216, MSC 9634, Bethesda, MD 20892-9634, 301-443-4491, mblehar@mail.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: September 5, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-4485 Filed 9-11-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Proposed Project: Cross-Site Assessment of the Residential Treatment for Pregnant and Postpartum Women (PPW), Their Minor Children and Family Program—(OMB No. 0930-0269)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), has funded additional Services Grants for Residential Treatment for Pregnant and Postpartum Women (PPW). The primary purpose of the PPW Program is to provide cost-effective, comprehensive residential substance abuse treatment services for women and their minor children that can be sustained over time. Based on six-month data collection experience gained during training on the cross-site process and instrument administration and data collection with the six projects in the 2003 (first) cohort of this Assessment and feedback from project and assessment staff, the following modifications are proposed: (1) To implement modifications to the instruments; (2) to replace the 12-month post-intake data collection wave with a 6-month post-discharge data collection wave to ensure that post-discharge data is collected on all women (as some may still be in residential treatment at 12 months) and because it is important to collect post-discharge outcome data for all women—especially over a uniform interval (i.e., 6 months); (3) to increase the number of sites and participants involved in this Cross-site Assessment; and, (4) to increase the target population to ensure that the PPW program is more family-centered, as required in Congressional budget language for the PPW program for 2006.

Section 508 [290bb-1] of the Public Health Service Act, as amended, mandates the evaluation and dissemination of findings of residential treatment programs for pregnant and postpartum women. This cross-site accountability assessment will assess project activities implemented for these services. The data collection instruments will be used for program and treatment planning and for this cross-site accountability assessment. The following interview instruments will be administered to mothers:

1. Child Data Collection Tool, Part 1 (child's demographic background) and Part 2 (child's medical background) administered within 30 days of the mother's intake or the child's birth for each of the woman's estimated 4 children;
2. Allen Barriers to Treatment Instrument;

3. Ferrans and Powers Quality of Life Index© Generic Version—III;

4. BASIS–24® (first cohort used BASIS–32®)—behavioral health assessment;

5. Child Well-Being Scales;

6. Family Recovery Support Services Tool; and

7. GPRA at 6-months post-discharge.

The Family Recovery Support Services Tool is a new tool that will assess the level of services received by the women, the children, and family members at 6-months post-intake, at discharge, and at 6 months post-discharge. The Ferrans and Powers Quality of Life Index© Generic Version–III will collect information from women and their partners/children’s fathers on overall family satisfaction including the woman’s satisfaction with her partner

and the emotional support she receives from her family.

For all children under 18 years, program staff will collect information from observation and interview. Children’s data collection tools include the following:

1. Denver Developmental Screening Inventory II (ages 0 to 6 years, 0 days);

2. Middle Childhood Developmental Assessment Guide (ages 6 to 10);

3. Adolescent Childhood Developmental Assessment Guide (ages 11 to 17); and

4. CRAFFT substance abuse screening instrument (ages 11–17).

In addition, records review will be conducted by program staff on all program participants using:

1. Women’s Medical Record Audit and the Child’s Medical Record Audit or the Newborn’s Medical Record Audit (at delivery); and

2. Women’s Discharge Tool and the Children’s Discharge Tool at discharge only.

All data will be collected using a combination of observation, records review, self-administered paper-and-pencil questionnaires, and personal interviews. CSAT will use this data for this Assessment to inform public policy, research, and programming as they relate to the provision of women’s services. Data produced by this study will provide direction to the type of technical assistance that will be required by service providers of women’s programming. In addition, the data will be used by individual grantees to support progress report efforts.

The following table shows the estimated annual response burden for this collection.

TOTAL ANNUAL RESPONDENT BURDEN

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Annual Burden for Interviews of the Mothers					
Child Data Collection Tool ^a	321	4	1,284	0.75	963
Allen Barriers to Treatment ^b	321	4	1,284	0.25	321
Ferrans and Powers Quality of Life Index ^b	321	4	1,284	0.25	321
BASIS 24® ^b	321	4	1,284	0.17	218
Child Well-Being Scales (age 0 to 17) ^c	321	20 (5 times, ≤ 4 settings)	6,420	0.33	2,119
Family Recovery Support Services Tool ^d	321	3	963	0.25	241
GPRA at 6-months post-discharge	321	1	321	0.33	106
Total for Mothers	321	.....	12,840	.....	4,289
Annual Burden for Interviews of the Partners/Fathers					
Ferrans and Powers Quality of Life Index ^e	642	1	642	0.25	161
Total for Family Members	642	.....	642	.....	161
Annual Burden for Interviews of the Minor Children					
Denver Developmental Screening Inventory II (age 0 to 6 years) ^f	770	5	3,850	0.50	1,925
Middle Childhood Developmental Assessment Guide (age 6 to 10) ^g	257	5	1,285	0.33	424
Adolescent Childhood Developmental Assessment Guide (age 11 to 17) ^h	257	5	1,285	0.33	424
CRAFFT (age 11 to 17) ^h	257	5	1,285	0.17	218
Total for Minor Children	1,284	5	7,705	.....	2,991
Annual Burden for Records Review by Staff					
Women’s Medical Record Audit	8	120 (40 women, 3 times)	960	0.25	240
Children’s Medical Record Audit	8	600 (117 intakes; 1,284 followups, 3 times = 483)	4,800	0.25	1,200
Newborn’s Medical Record Audit	8	43	344	0.08	28
Women’s Discharge Tool ⁱ	8	40	320	0.58	186
Children’s Discharge Tool ^j	8	161	1,288	0.58	747

TOTAL ANNUAL RESPONDENT BURDEN—Continued

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Total for Staff	8	.....	7,712	.....	2,401
Total	2,255	.....	28,899	.....	9,842

^a Based on intake interviews of 321 mothers regarding each of her estimated 4 children.

^b Based on interviews with 321 mothers at intake, 6 months, discharge, and 6 months post-discharge.

^c Based on interviews of 321 mothers (and observation of them interacting with their children) with regard to the setting in which each of her estimated 4 children lives. If all children live in the same setting, then the instrument is only completed once. This instrument is completed according to the children's data collection schedule—that is, at intake/delivery, 3 months, 6 months, discharge, and 6 months post-discharge.

^d Based on 321 mothers at 6 months post-intake, at discharge, and 6 months post discharge

^e Based on 2 family members responding, on average, for each of 321 women.

^f Based on 60% of 1,284 minor children ages 0 to 6 at intake or delivery, 3 months, 6 months, discharge, and at 6-months post-discharge.

^g Based on 20% of 1,284 minor children ages 6 to 10 years at intake, 3 months, 6 months, discharge, and 6-months post-discharge.

^h Based on 20% of 1,284 minor children ages 11 to 17 at intake, 3 months, 6 months, discharge, and 6-months post-discharge.

ⁱ Based on treatment records review on all mothers at discharge. The instrument is completed for all women who entered treatment regardless of treatment completion rate.

^j Based on treatment records review on all minor children at discharge. The discharge instrument is completed for all minor children who entered treatment regardless of treatment completion rate.

Written comments and recommendations concerning the proposed information collection should be sent by October 12, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202-395-6974.

Dated: September 7, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7-17998 Filed 9-11-07; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of a Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Advisory Committee for Women's Services on September 24-25, 2007.

The meeting is open and will include a report from the SAMHSA Administrator, Dr. Terry L. Cline. The meeting will focus on wellness issues as they relate to women and girls with or at risk for mental and substance use disorders, and include presentations from national stakeholders and SAMHSA grantees. In addition, there will be presentations on criminal justice and women, the Suicide Prevention

Campaign, and updates on SAMHSA's Campus Suicide Prevention Grants Program and the National Suicide Prevention Lifeline for Veterans.

Attendance by the public will be limited to the space available. Public comments are welcome. Please communicate with the Committee's Executive Secretary, Ms. Carol Watkins (see contact information below), to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Committee members may be obtained either by accessing the SAMHSA Committee's Web site at <https://www.nac.samhsa.gov/> as soon as possible after the meeting, or by contacting Ms. Watkins. The transcript for the meeting will also be available on the SAMHSA Committee's Web site within three weeks after the meeting.

Committee Name: SAMHSA Advisory Committee for Women's Services.

Date/Time/Type: Monday, September 24, 2007, from 9 a.m. to 5 p.m.: Open; Tuesday, September 25, 2007, from 9 a.m. to 12 p.m.: Open.

Place: 1 Choke Cherry Road, Sugarloaf Conference Room, Rockville, Maryland 20857.

Contact: Carol Watkins, Executive Secretary, SAMHSA Advisory Committee for Women's Services, 1 Choke Cherry Road, Room 8-1002, Rockville, Maryland 20857, Telephone: (240) 276-2254; Fax: (240) 276-1024 and e-mail: carol.watkin2@samhsa.hhs.gov.

Dated: September 5, 2007.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E7-17951 Filed 9-11-07; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration, Federal Emergency Management Agency, DHS.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Federal Emergency Management Agency announces the following committee meeting:

Name: Board Of Visitors (BOV) for the National Fire Academy.

Date of Meeting: October 4-6, 2007.

Place: Building J, Room 236, National Emergency Training Center, Emmitsburg, Maryland.

Time: October 4, 9 a.m.-5 p.m.; October 5, 9 a.m.-5 p.m.; October 6, 8:30 a.m.-11:30 a.m.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the Federal Emergency Management Agency announces that the committee meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-

come, first-served basis. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447-1117, on or before September 28, 2007.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

The National Fire Academy Board of Visitors is administered by the U.S. Fire Administration which is part of the Federal Emergency Management Agency in the Department of Homeland Security.

Dated: August 30, 2007.

Charlie Dickinson,

Deputy Assistant Administrator, U.S. Fire Administration.

[FR Doc. E7-17915 Filed 9-11-07; 8:45 am]

BILLING CODE 9110-17-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5117-N-76]

Notice of Submission of Proposed Information Collection to OMB; Minimum Property Standards for Multifamily and Care-Type Facilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

These Standards establish the acceptability of properties for mortgage insurance and will forward the goal of a decent and suitable living environment for every American family. This information is collected from State and local governments to assess the adequacy of their existing housing standards to meet HUD's minimum requirements. These Standards will protect the Department's interest by requiring certain features of design and construction.

DATES: *Comments Due Date:* October 12, 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 (2502-0321) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT:

Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a

request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Minimum Property Standards for Multifamily and Care-type Facilities

OMB Approval Number: 2502-0321.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

These Standards establish the acceptability of properties for mortgage insurance and will forward the goal of a decent and suitable living environment for every American family. This information is collected from State and local governments to assess the adequacy of their existing housing standards to meet HUD's minimum requirements. These Standards will protect the Department's interest by requiring certain features of design and construction.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,000	1		8.4		8,400

Total Estimated Burden Hours: 8,400.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 6, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7-17903 Filed 9-11-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5117-N-78]

Notice of Submission of Proposed Information Collection to OMB; Mortgagee's Application for Partial Settlement (Multifamily Mortgage)

AGENCY: Office of the Chief Information Officer, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Mortgagees who elect to assign multifamily property to HUD complete form HUD-2537, Mortgagee's Application for Partial Settlement, Multifamily Mortgage. HUD uses the information to process a partial claim

payment within 24 to 48 hours after assignment or conveyance.

DATES: *Comments Due Date:* October 12, 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 (2502-0427) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian.L.Deitzer@HUD.gov or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from

HUD's Web site at <http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm>.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgagee's Application for Partial Settlement (Multifamily Mortgage)

OMB Approval Number: 2502-0427.

Form Numbers: HUD-2537.

Description of the Need for the Information and Its Proposed Use: Mortgagees who elect to assign multifamily property to HUD complete form HUD-2537, Mortgagee's Application for Partial Settlement, Multifamily Mortgage. HUD uses the information to process a partial claim payment within 24 to 48 hours after assignment or conveyance.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	215	1		0.26		57

Total Estimated Burden Hours: 57.
Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 6, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7-17904 Filed 9-11-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5117-N-75]

Notice of Submission of Proposed Information Collection to OMB; Informed Consumer Choice Notice and Application for FHA Insured Mortgage

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The addendum to the URLA and related documents are needed to determine the eligibility of the borrower and proposed mortgage transaction for FHA's insurance endorsement. Lenders seeking FHA's insurance prepare these forms.

DATES: *Comments Due Date:* October 12, 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 (2502-0059) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian.L.Deitzer@HUD.gov or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at <http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm>.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a

request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Informed Consumer Choice Notice and Application for FHA Insured Mortgage.

OMB Approval Number: 2502-0059.

Form Numbers: HUD-92900-A, HUD-92900-B, HUD-92900-LT, HUD-92900-WS, HUD-92900-PUR, HUD-92561, HUD-92544, Addendum to HUD-1, Model Notice for Informed Consumer Choice Disclosure, Model Pre-insurance Review.

Description of the Need for the Information and Its Proposed Use: The addendum to the URLA and related documents are needed to determine the

eligibility of the borrower and proposed mortgage transaction for FHA's insurance endorsement. Lenders seeking FHA's insurance prepare these forms.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8,000	297		.09		225,050

Total Estimated Burden Hours: 225,050.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 6, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7-17906 Filed 9-11-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5117-N-77]

Notice of Submission of Proposed Information Collection to OMB; Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information is distributed to tenants of assisted rental housing units detailing guidelines for pet ownership. The

information is necessary for owner compliance with nondiscrimination in federally assisted rental housing for the elderly or handicapped for pet ownership.

DATES: *Comments Due Date:* October 12, 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 (2502-0342) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT:

Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian_L_Deitzer@HUD.gov or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at <http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm>.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies

concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped.

OMB Approval Number: 2502-0342.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Information is distributed to tenants of assisted rental housing units detailing guidelines for pet ownership. The information is necessary for owner compliance with nondiscrimination in federally assisted rental housing for the elderly or handicapped for pet ownership.

Frequency of Submission: Annually, Other As required based on events in item 12 of the supporting statement.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	128,656	6.07		0.448		350,700

Total Estimated Burden Hours: 350,700.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 6, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7-17908 Filed 9-11-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-055-5853-EU]

Submission to Office of Management and Budget—Information Collection, OMB Control Number 1004-XXXX

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) has submitted a request for a new information collection to the Office of Management and Budget (OMB) for approval.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments to OMB at the address below by October 12, 2007 to receive maximum consideration.

ADDRESSES: Send comments to the OMB, Interior Department Desk Officer (1004-XXXX), at OMB-OIRA via e-mail OIRA_DOCKET@omb.eop.gov or via facsimile at (202) 395-6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004-XXXX in your Internet message to comments_washington@blm.gov or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN: Bureau Information Collection Clearance Officer (WO-630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Shirlean Beshir to obtain copies and explanatory material on this information collection at (202) 452-5033. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1-800-877-8330, 24 hours a day, seven days a week, to contact Ms. Beshir.

SUPPLEMENTARY INFORMATION: On November 21, 2006, the BLM published a notice in the *Federal Register* (71 FR 63764) requesting comments on the information collection. The comment period closed on January 22, 2007. The BLM did not receive any comments.

We are soliciting comments on the following:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology.

Title: Alternative Futures for the Upper Las Vegas Wash Survey.

OMB Control number: 1004-XXXX.

Abstract: The information from the social survey will be used by Utah State University, along with soils, biological, and resource damage information, in an alternative futures model that will predict human impacts to sensitive resources within the Upper Las Vegas Wash as adjacent development expands. The alternative futures model will assist the BLM with understanding the potential impacts to the landscape resulting from different land use decisions and implementing effective program that protect the sensitive resources in the Upper Las Vegas Wash.

Burden Estimate per Form: We estimate 30 minutes to complete this survey.

Annual Responses: 600.

Application Fee per Response: 0.

Annual Burden Hours: 300.

Dated: September 6, 2007.

Shirlean Beshir,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 07-4474 Filed 9-11-07; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "National Longitudinal Survey of Youth 1979." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual

listed in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 13, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202-691-7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202-691-7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1979 (NLSY79) is a representative national sample of persons who were born in the years 1957 to 1964 and lived in the U.S. in 1978. These respondents were ages 14-22 when the first round of interviews began in 1979; they will be ages 43 to 50 when the planned twenty-third round of interviews is conducted from January 2008 to January 2009. The NLSY79 was conducted annually from 1979 to 1994 and has been conducted biennially since 1994. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

In addition to the main NLSY79, the biological children of female NLSY79 respondents have been surveyed since 1986, when the National Institute of Child Health and Human Development began providing funding to the BLS to gather a large amount of information about the lives of these children. A battery of child cognitive, socio-emotional, and physiological assessments has been administered biennially since 1986 to NLSY79 mothers and their children. Starting in 1994, children who had reached age 15 by December 31 of the survey year (the Young Adults) were interviewed about their work experiences, training, schooling, health, fertility, and self-esteem, as well as sensitive topics addressed in a supplemental, self-administered questionnaire.

The BLS contracts with the Center for Human Resource Research (CHRR) of the Ohio State University to implement the NLSY79, Child, and Young Adult surveys. Interviewing of respondents is conducted by the National Opinion Research Center (NORC) of the University of Chicago. Among the

objectives of the Department of Labor (DOL) are to promote the development of the U.S. labor force and the efficiency of the U.S. labor market. The BLS contributes to these objectives by gathering information about the labor force and labor market and disseminating it to policy makers and the public so that participants in those markets can make more informed and, thus, more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY79, members of the academic community publish articles and reports based on NLSY79 data for the DOL and other funding agencies. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of intergenerational information for these important population groups. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policy makers, and the DOL would not have the data for use in performing its policy and report-making activities.

II. Current Action

The BLS seeks approval to conduct the round 23 interviews of the NLSY79 and the associated surveys of biological children of female NLSY79 respondents. The NLSY79 Child Survey involves three components:

- The Mother Supplement is administered to female NLSY79 respondents who live with biological children under age 15. This

questionnaire will be administered to about 1,300 women, who will be asked a series of questions about each child under age 15. On average, these women each have about 1.26 children under age 15, for a total number of approximately 1,638 children.

- The Child Supplement involves aptitude testing of about 1,450 children under age 15.
- The Child Self-Administered Questionnaire is administered to approximately 900 children ages 10 to 14.

In addition to the main NLSY79 and Child Survey, the Young Adult Survey will be administered to approximately 6,360 youths ages 15 and older who are the biological children of female NLSY79 respondents. These youths will be contacted for an interview regardless of whether they reside with their mothers. The NLSY79 Young Adult Survey involves two components:

- The Young Adult Survey involves testing of about 2,195 youths ages 15 to 20.
- The Young Adult Survey, Grant component is administered to approximately 4,165 youths age 21 and older.

During the field period, about 200 main NLSY79 interviews are validated to ascertain whether the interview took place as the interviewer reported and whether the interview was done in a polite and professional manner.

The BLS has undertaken a continuing redesign effort to examine the current content of the NLSY79 and provide direction for changes that may be appropriate as the respondents enter middle age. Based on the 1998 redesign conference and subsequent discussions, as well as experiences in 2000–2006, the 2008 instrument reflects a number of

content changes recommended by experts in various social science fields and by an internal review of the survey’s content. A full list of the proposed changes to the questionnaire is available upon request. Additions to the questionnaire have been balanced by deletions of previous questions so that the overall time required to complete the survey should remain about the same.

III. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Revision.
Agency: Bureau of Labor Statistics.
Title: National Longitudinal Survey of Youth 1979.
OMB Number: 1220–0109.
Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (min)	Estimated total burden (hours)
NLSY79 Round 21 Pretest	100	Biennially	100	60	100
Main NLSY79 Survey	7,550	Biennially	7,550	60	7,550
Main NLSY79 Validation Reinterview	200	Biennially	200	6	20
Mother Supplement	1,300	Biennially	1,638	20	546
Child Supplement	1,450	Biennially	1,450	31	750
Child Self-Administered Questionnaire	900	Biennially	900	30	450
Young Adult Survey	2,195	Biennially	2,195	45	1,646
Young Adult Survey, Grant component	4,165	Biennially	4,165	53	3,679
Totals ²	15,460	.....	18,198	.....	14,741

¹ The number of respondents for the Mother Supplement (1,300) is less than the number of responses (1,638) because mothers are asked to provide separate responses for each of the biological children with whom they reside. Since the Mother Supplement is given to children ages 0–14, the number of responses is greater than the Children’s Supplement, which is only given to children ages 4–14 years.

² The total number of 15,460 respondents across all the survey instruments is a mutually exclusive count that does not include: (1) The 200 reinterview respondents, who were previously counted among the 7,550 main survey respondents, (2) the 1,300 Mother Supplement respondents, who were previously counted among the main youth, and (2) the 900 Child SAQ respondents, who were previously counted among the 1,450 Child Supplement respondents.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 7th day of September 2007.

Kimberley Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7-17945 Filed 9-11-07; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)].

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection: Worker Information—Terms and Conditions of Employment (WH-516 English and WH-516 Espanol). A copy of the information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 13, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0418, fax (202) 693-1451, E-mail bell.hazel@dol.gov. Please use only one

method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Various sections of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.*, require respondents (i.e., Farm Labor Contractors, Agricultural Employers, and Agricultural Associations) to disclose employment terms and conditions in writing to: (1) Migrant agricultural workers at the time of recruitment [MSPA section 201(a)]; (2) seasonal agricultural workers, upon request, at the time an offer of employment is made [MSPA section 301(a)(1)]; and (3) seasonal agricultural workers employed through a day-haul operation at the place of recruitment [MSPA section 301(a)(2)]. See 29 CFR 500.75-.76. Moreover, MSPA sections 201(b) and 301(b) require respondents to provide each migrant worker, upon request, with a written statement of the terms and conditions of employment. See 29 CFR 500.75(d). MSPA sections 201(g) and 301(f) require providing such information in English or, as necessary and reasonable, in a language common to the workers and that the DOL make forms available to provide such information. The DOL prints and makes Optional Form WH-516, Worker Information—Terms and Conditions of Employment, available for these purposes. See 29 CFR 500.75(a), 500.76(a).

MSPA sections 201(a)(8) and 301(a)(1)(H) require disclosure of certain information regarding whether State workers' compensation or state unemployment insurance is provided to each migrant or seasonal agricultural worker. See 29 CFR 500.75(b)(6). For example, if State workers' compensation is provided, the respondents must disclose the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which this notice must be given. See 29 CFR 500.75(b)(6)(i). Respondents may also meet this disclosure requirement by providing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the state in which such worker is employed. See 29 CFR 500.75(b)(6)(ii). Form WH-516 is an optional form that allows respondents to disclose employment terms and conditions in writing to migrant and seasonal agricultural workers as

required by the MSPA. Respondents may either complete the optional form and use it to make the required disclosures to the workers or use the form as a written reflection of the information workers may request from employers under the MSPA. Disclosure of the information on this form is beneficial to both parties in that it enables workers to understand their employment terms and conditions, while also providing respondents with an easy way to disclose the information required by the MSPA and the regulations. This information collection is currently approved for use through February 29, 2008.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The DOL seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to ensure that farm labor contractors, agricultural employers and agricultural associations have disclosed to their migrant and seasonal agricultural workers the terms and conditions of employment as required by the MSPA and its regulations.

Type of Review: Extension of a currently approved collection of information.

Agency: Employment Standards Administration.

Title: Worker Information—Terms and Conditions of Employment.

OMB Number: 1215-0187.

Agency Number: WH-516 English and WH-516 Espanol.

Affected Public: Farms, Individuals or households, Business or other for-profit.

Total Respondents: 129,250.

Total Responses: 3,102,000.

Average Time per Response: 1.5 minutes.

Estimated Total Burden Hours: 77,550.

Frequency: On Occasion.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$93,060.

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: September 6, 2007.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7-17891 Filed 9-11-07; 8:45 am]

BILLING CODE 4510-27-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72 issued to the Carolina Power & Light Company (FPC, the licensee) for operation of the Crystal River Nuclear Plant, Unit No. 3 (CR-3), located in Citrus County, Florida.

The proposed amendment would change the Technical Specifications (TSs) related to low pressure injection, reactor building spray, decay heat closed cycle cooling water, and decay heat seawater systems to extend the allowable completion time associated with one inoperable train of these systems.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10

of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Part of the proposed changes introduces a Condition for an inoperable LPI [low pressure injection] with an AOT [allowed outage time] of seven days, introduces another Condition for an inoperable BS train coincident with an inoperable Containment Cooling train with an AOT of 72 hours, and extends the AOT for one inoperable BS train, DC train, and/or RW train to seven days. These systems are not initiators for any accident previously evaluated. The consequences of an event during the extended Completion Time are no more severe than the consequences of the same event during the current Completion Time. Therefore, the consequences of an event previously analyzed are not increased, so the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Another part of the proposed changes eliminates second Completion Times from the CR-3 ITS [Improved TSs]. Second Completion Times are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident during the revised Completion Time are no different from the consequences of the same accident during the existing Completion Times. As a result, the consequences of an accident previously evaluated are not affected by this change. The proposed changes do not alter or prevent the ability of SSCs [structures, systems, or components] from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with the safety analysis assumptions and resultant consequences.

The proposed editorial/administrative changes remove obsolete information and provide clarification. These changes do not

affect any system that is an initiator for any accidents previously evaluated. The consequences of an accident previously evaluated are not affected. The proposed changes do not alter or prevent the ability of SSCs from performing their intended function to mitigate the consequences of an initiating event. The proposed editorial/administrative changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed editorial/administrative changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with the safety analysis assumptions and resultant consequences.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. These changes do not alter any assumptions made in the safety analysis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

One part of the proposed changes introduces a Condition for an inoperable LPI with an AOT of seven days, introduces another Condition for an inoperable BS train coincident with an inoperable Containment Cooling train with an AOT of 72 hours, and extends the AOT for one inoperable BS train, DC train, and/or RW train to seven days. An evaluation presented in Reference 8.3, and accepted by the NRC, concluded that the extended Completion Time did not result in a significant reduction in the margin of safety. An analysis performed by FPC also drew the same conclusion. Therefore, extending the AOT to seven days for these components does not involve a significant reduction in a margin of safety.

The proposed change to delete the second Completion Time from the CR-3 ITS does not alter the manner in which safety limits, limiting safety system settings or LCOs [limiting conditions for operation] are determined. The safety analysis acceptance criteria are not affected by this change. The proposed changes will not result in plant operation in a configuration outside of the design basis.

Similarly, the proposed editorial/administrative changes do not alter the manner in which safety limits, limiting safety system settings or LCOs are determined. The safety analysis acceptance criteria are not affected by this change. As such, the proposed editorial/administrative changes will not result in plant operation in a configuration outside of the design basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall

provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor,

One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated January 22, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 6th day of September 2007.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Senior Project Manager, Plant Licensing Branch II-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7-17971 Filed 9-11-07; 8:45 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; September 17, 2007 Public Hearing

TIME AND DATE: 2 p.m., Monday, September 17, 2007.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing Open to the Public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than noon Friday, September 14, 2007. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than noon, Friday, September 14, 2007. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT:

Information on the hearing may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 218-0136, or via e-mail at cdown@opic.gov.

Dated: September 6, 2007.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 07-4496 Filed 9-10-07; 11:56 am]

BILLING CODE 3210-01-M

OFFICE OF PERSONNEL MANAGEMENT

Nonforeign Area Cost-of-Living Allowances; 2006 Interim Adjustments

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice publishes the 2006 interim adjustments for the Pacific and Caribbean Nonforeign Area Cost-of-Living Allowance (COLA) areas. The Federal Government conducts COLA surveys in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands to set COLA rates. These surveys are conducted once every 3 years on a rotating basis. In between COLA surveys, the Government adjusts COLA rates for the areas not surveyed using the relative change in the Consumer Price Index (CPI) for the COLA area compared with the Washington-Baltimore CPI. The Pacific and Caribbean COLA areas were not surveyed in 2006. Therefore, OPM is calculating and publishing interim adjustments for these COLA areas. This notice also publishes a revised listing of the 2005 estimated Washington, DC, area middle income annual consumer expenditure data.

DATES: We will consider comments received on or before November 13, 2007.

ADDRESSES: Send or deliver comments to Charles D. Grimes III, Deputy Associate Director for Performance Management and Pay Systems, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7300B, 1900 E Street, NW., Washington, DC 20415-8200; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

FOR FURTHER INFORMATION CONTACT: J. Stanley Austin, (202) 606-2838; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

SUPPLEMENTARY INFORMATION: Subpart B of part 591 of title 5, Code of Federal Regulations, requires the Office of Personnel Management (OPM) to set nonforeign area cost-of-living allowance (COLA) rates for U.S. Postal Service and white-collar Federal employees in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands (USVI). Section 591.223(a) prescribes that we conduct these surveys on a rotating basis, once every 3 years. Section 591.224 requires we adjust the previous COLA survey price indexes for the areas not surveyed by using the relative change in the Consumer Price Index (CPI) for the

COLA area compared with the change in the Washington, DC, area CPI.

In 2006, we surveyed Anchorage, Fairbanks, and Juneau, Alaska. We did not survey the Caribbean or Pacific COLA areas. Therefore, we are adjusting the previous Caribbean and Pacific survey price indexes using the relative change in CPIs. As required by § 591.225, we used the CPI, All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics (BLS) for Honolulu and the Washington-Baltimore area and the Puerto Rico CPI as produced by the Puerto Rico Department of Work and Human Resources.

2004 Pacific Survey Results and Interim Adjustments

First, we computed the change in prices for the Honolulu area compared with the change in prices for the Washington-Baltimore area using the CPI-U's for each area. Table 1 shows this process.

TABLE 1.—HONOLULU AND WASHINGTON-BALTIMORE CPI-U CHANGES 2004 TO 2006

Survey area	CPI-U
Honolulu 2004 CPI-U first half ...	189.2
Honolulu 2006 CPI-U first half ...	206.4
Honolulu change	9.0909%
DC-Baltimore 2004 CPI-U first half	118.3
DC-Baltimore 2006 CPI-U first half	127.7
DC-Baltimore change	7.9459%

Next, we multiplied the *price* indexes from the five 2004 Pacific surveys (Honolulu, Hawaii County, Kauai, Maui, and Guam) by the change in the Honolulu CPI-U and divided that by the change in the Washington-Baltimore CPI-U. The price index is the COLA survey index before the addition of the adjustment factor specified in § 591.227. The adjustment factor reflects differences in need, access to and availability of goods and services, and quality of life in the COLA area relative to the DC area and is a fixed amount.

Therefore, it is not adjusted by the change in the CPI.

OPM published the 2004 Pacific survey report in the **Federal Register** on August 4, 2005, at 70 FR 44989. The report included the survey price indexes for each of the Pacific COLA areas. OPM revised these price indexes in a final rule published in the **Federal Register** on August 2, 2006, at 71 FR 43897.

Table 2 shows the interim adjustment process. For example, the 2004 Maui COLA survey adjusted index, as published in the **Federal Register**, is 131.50. The Maui adjustment factor is 7 points. Therefore, subtracting the adjustment factor shows 124.50 as the *price* index from the 2004 survey. We increased this price index by 9.0909% (i.e., multiplied by 1.090909), the change in the Honolulu CPI-U, and reduced it by 7.9459% (i.e., divided by 1.079459), the change in the Washington-Baltimore CPI-U, to give a new price index of 125.82. We then added the 7 point adjustment factor to the new price index, which yields a 2006 Maui Interim Adjustment COLA rate of 132.82.

TABLE 2.—PACIFIC COLA AREA CPI-U PRICE INDEX ADJUSTMENTS

	Honolulu	Hawaii Co	Kauai	Maui	Guam
2004 COLA Survey Indexes	125.80	117.25	127.63	131.50	127.40
Adjustment Factors	5	7	7	7	9
2004 COLA Survey Price Indexes	120.80	110.25	120.63	124.50	118.40
2006 CPI Adjusted Price Indexes	122.08	111.42	121.91	125.82	119.66
2006 COLA Indexes with Adj. Factors	127.08	118.42	128.91	132.82	128.66

2005 Caribbean Survey Results and Interim Adjustments

The process we used to compute the interim adjustments for the Caribbean areas (i.e., Puerto Rico and USVI) is identical to the one for the Pacific areas except that we used the Puerto Rico CPI as produced by the Puerto Rico Department of Work and Human Resources, as specified in § 591.225. Table 3 shows the relative change in the Puerto Rico CPI compared with the Washington-Baltimore CPI-U.

TABLE 3.—PUERTO RICO AND WASHINGTON-BALTIMORE CPI-U CHANGES 2005 TO 2006

Survey area	CPI-U
Puerto Rico 2005 CPI first half (June)	277.2
Puerto Rico 2006 CPI first half (June)	312.2
Puerto Rico change	12.6263%
DC-Baltimore 2005 CPI-U first half	122.8
DC-Baltimore 2006 CPI-U first half	127.7
DC-Baltimore change	3.9902%

We multiplied the Puerto Rico and USVI price indexes by the change in the

Puerto Rico CPI and divided that by the change in the Washington-Baltimore CPI-U. OPM published price indexes for Puerto Rico and USVI in the 2005 Caribbean survey report at 71 FR 63179. As noted in section 4.2.3 of the report, we calculated the Puerto Rico survey index (103.32) after we re-priced water utilities based on a post-survey increase in water utility rates. The CPI for Puerto Rico already reflects this increase; therefore, we reverted to the pre-increase index level (103.06) to avoid duplication in the interim adjustment calculation. Table 4 shows the 2005 indexes, the interim adjustment process, and the final results.

TABLE 4.—CARIBBEAN COLA AREA CPI-U PRICE INDEX ADJUSTMENTS

	Puerto Rico	USVI
2005 COLA Survey Indexes	103.06	128.21
Adjustment Factors	7	9
2005 COLA Survey Price Indexes	96.06	119.21
2005 CPI Adjusted Price Indexes	104.04	129.11
2005 COLA Indexes with Adj. Factors	111.04	138.11

Interim Adjustments Summarized

In a proposed rule published on September 6, 2007, at 72 FR 51200, OPM proposed to adjust COLA rates based on the interim CPI adjustments. In the Pacific, the results indicate that COLA rates in all of the areas except Hawaii County are currently set at the appropriate levels. In Hawaii County, the results show that the COLA rate should be increased to 18 percent. In the Caribbean, the results indicate that the

COLA rate for the U.S. Virgin Islands is currently set at the appropriate level and the rate for Puerto Rico should be increased to 11 percent. As noted in the proposed rule, OPM plans an additional adjustment to the Puerto Rico COLA rate based on the impact of the new Puerto Rico sales tax.

Consumer Expenditure Data

Appendix 2 of the 2005 COLA survey report included a listing of estimated DC

area middle income annual consumer expenditures. We are publishing a revised listing of the consumer expenditure data with this notice. The revised listing contains the data we used in the 2005 survey index calculations.

Office of Personnel Management,
Linda M. Springer,
Director.

Appendix 2 of the 2005 survey report published on October 27, 2006, at 71 FR 63179, is revised to read as follows:

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
1	TOTALEXP		Total Expenditure	\$53,419.79
2	FOODTOTL	MEG	Food	7,134.14
3	CERBAKRY	PEG	Cereals and bakery products	464.86
4	CEREAL		Cereals and cereal products	149.47
5	010110		Flour	6.94
5	010120		Prepared flour mixes	14.00
5	010210		Ready-to-eat and cooked cereals*	88.57
5	010310		Rice*	14.20
5	010320		Pasta, cornmeal and other cereal products*	25.76
4	BAKERY		Bakery products	315.39
5	BREAD		Bread	89.22
6	020110		White bread*	37.03
6	020210		Bread, other than white*	52.19
5	CRAKCOOK		Crackers and cookies	75.49
6	020510		Cookies*	46.97
6	020610		Crackers	28.53
5	020810		Frozen and refrigerated bakery products*	25.01
5	OTHBAKRY		Other bakery products	125.66
6	020310		Biscuits and rolls*	40.27
6	020410		Cakes and cupcakes*	39.02
6	020620		Bread and cracker products	4.14
6	020710		Sweetrolls, coffee cakes, doughnuts	31.61
6	020820		Pies, tarts, turnovers	10.62
3	ANIMAL	PEG	Meats, poultry, fish, and eggs	863.96
4	BEEF		Beef	243.93
5	030110		Ground beef*	89.22
5	ROAST		Roast	38.35
6	030210		Chuck roast*	14.35
6	030310		Round roast*	10.28
6	030410		Other roast	13.71
5	STEAK		Steak	94.50
6	030510		Round steak*	16.51
6	030610		Sirloin steak*	35.26
6	030710		Other steak	42.73
5	030810		Other beef	21.86
4	PORK		Pork	122.02
5	040110		Bacon*	22.76
5	040210		Pork chops*	25.15
5	HAM		Ham	26.83
6	040310		Ham, not canned*	25.98
6	040610		Canned ham*	0.85
5	040510		Sausage	17.68
5	040410		Other pork	29.59
4	OTHRMEAT		Other meats	101.89
5	050110		Frankfurters*	23.20
5	LNCHMEAT		Lunch meats (cold cuts)	71.41
6	050210		Bologna, liverwurst, salami*	19.93
6	050310		Other lunchmeats	51.48
5	LAMBOTHR		Lamb, organ meats and others	7.27
6	050410		Lamb and organ meats	5.49
6	050900		Mutton, goat and game	1.78
4	POULTRY		Poultry	138.17
5	CHICKEN		Fresh and frozen chickens	111.07
6	060110		Fresh and frozen whole chicken*	31.90
6	060210		Fresh and frozen chicken parts*	79.16
5	060310		Other poultry	27.10

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
4	FISHSEA		Fish and seafood	227.05
5	070110		Canned fish and seafood*	29.02
5	070230		Fresh fish and shellfish*	124.88
5	070240		Frozen fish and shellfish*	73.16
4	080110		Eggs*	30.90
3	DAIRY	PEG	Dairy products	340.36
4	MILKCRM		Fresh milk and cream	124.54
5	090110		Fresh milk, all types*	111.20
5	090210		Cream	13.33
4	OTHDAIRY		Other dairy products	215.82
5	100110		Butter	16.56
5	100210		Cheese*	107.77
5	100410		Ice cream and related products*	63.49
5	100510		Miscellaneous dairy products	28.01
3	FRUITVEG	PEG	Fruits and vegetables	428.27
4	FRSHFRUT		Fresh fruits	203.54
5	110110		Apples*	40.79
5	110210		Bananas*	33.54
5	110310		Oranges*	21.79
5	110510		Citrus fruits, excluding oranges	17.70
5	110410		Other fresh fruits	89.71
4	FRESHVEG		Fresh vegetables	224.73
5	120110		Potatoes*	40.62
5	120210		Lettuce*	30.37
5	120310		Tomatoes*	41.11
5	120410		Other fresh vegetables	112.63
3	PROCFOOD	PEG	Processed Foods	826.00
4	PROCFRUT		Processed fruits	123.01
5	FRZNFRTUT		Frozen fruits and fruit juices	12.47
6	130110		Frozen orange juice*	5.09
6	130121		Frozen fruits	4.11
6	130122		Frozen fruit juices	3.26
5	130310		Canned fruits*	18.13
5	130320		Dried fruit	7.03
5	130211		Fresh fruit juice	23.15
5	130212		Canned and bottled fruit juice*	62.24
4	PROCVG		Processed vegetables	97.75
5	140110		Frozen vegetables*	31.86
5	CANDVEG		Canned and dried vegetables and juices	65.89
6	140210		Canned beans*	13.57
6	140220		Canned corn	8.01
6	140230		Canned miscellaneous vegetables	21.79
6	140320		Dried peas	0.24
6	140330		Dried beans	2.66
6	140340		Dried miscellaneous vegetables	9.02
6	140310		Dried processed vegetables	0.73
6	140410		Frozen vegetable juices	0.16
6	140420		Fresh and canned vegetable juices	9.71
4	MISCFOOD		Miscellaneous foods	605.25
5	FRZNPREP		Frozen prepared foods	124.46
6	180210		Frozen meals*	40.33
6	180220		Other frozen prepared foods	84.14
5	180110		Canned and packaged soups*	40.70
5	SNACKS		Potato chips, nuts, and other snacks	123.63
6	180310		Potato chips and other snacks*	96.36
6	180320		Nuts	27.27
5	CONDMNTS		Condiments and seasonings	100.94
6	180410		Salt, spices, other seasonings*	23.71
6	180420		Olives, pickles, relishes	12.41
6	180510		Sauces and gravies*	42.90
6	180520		Baking needs and miscellaneous products	21.92
5	OTHRPREP		Other canned and packaged prepared foods	174.30
6	180611		Prepared salads	20.81
6	180612		Prepared desserts*	12.66
6	180620		Baby food*	32.54
6	180710		Miscellaneous prepared foods	107.71
6	180720		Vitamin supplements	0.58
5	190904		Food prepared by consumer on out-of-town trips	41.20
3	OTHRFOOD	PEG	Other food at home	182.71
4	SWEETS		Sugar and other sweets	107.00
5	150110		Candy and chewing gum*	68.68

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
5	150211		Sugar*	14.65
5	150212		Artificial sweeteners*	4.85
5	150310		Jams, preserves, other sweets*	18.83
4	FATSOILS		Fats and oils	75.71
5	160110		Margarine*	9.85
5	160211		Fats and oils*	20.63
5	160212		Salad dressings*	22.71
5	160310		Nondairy cream and imitation milk*	10.57
5	160320		Peanut butter	11.95
3	NALCBEVG	PEG	Nonalcoholic beverages	244.87
4	170110		Cola*	86.74
4	170210		Other carbonated drinks	43.97
4	COFFEE		Coffee	34.00
5	170310		Roasted coffee*	23.19
5	170410		Instant and freeze dried coffee	10.80
4	170510		Noncarbonated fruit flavored drinks*	16.51
4	170520		Tea	13.75
4	200112		Nonalcoholic beer	0.28
4	170530		Other nonalcoholic beverages and ice	49.62
3	FOODAWAY	PEG	Food away from home	31.76
4	RESTRANT		Meals at restaurants, carry-outs and other	2,682.01
5	LUNCH		Lunch	1,000.00
6	190111		Lunch at fast food, take-out, delivery, etc.*	567.83
6	190112		Lunch at full service restaurants*	297.91
6	190113		Lunch at vending machines/mobile vendors	12.34
6	190114		Lunch at employer and school cafeterias	122.70
5	DINNER		Dinner	974.84
6	190211		Dinner at fast food, take-out, delivery, etc.*	334.65
6	190212		Dinner at full service restaurants*	631.54
6	190213		Dinner at vending machines/mobile vendors	2.82
6	190214		Dinner at employer and school cafeterias	5.84
5	SNKNABEV		Snacks and nonalcoholic beverages	400.30
6	190311		Snacks/nonalcoholic bev. at fast food, etc.*	291.19
6	190312		Snacks/nonalcoholic bev. at full svc. restaurants	44.46
6	190313		Snacks/nonalcoholic bev. at vending mach., etc	51.78
6	190314		Snacks/nonalcoholic bev. cafeterias	12.88
5	BRKFBRUN		Breakfast and brunch	306.10
6	190321		Breakfast & brunch at fast food, take-out, etc.*	155.78
6	190322		Breakfast & brunch at full service restaurants*	139.55
6	190323		Breakfast & brunch at vending machines	2.46
6	190324		Breakfast & brunch at cafeterias	8.30
4	NONRESME		Non Restaurant Meals	473.75
5	190901		Board (including at school)	22.63
5	190902		Catered affairs	62.78
5	190903		Food on out-of-town trips	255.51
5	790430		School lunches	92.14
5	800700		Meals as pay	40.69
3	ALCBEVG	PEG	Alcoholic beverages	627.36
4	ALCHOME		At home	405.24
5	200111		Beer and ale*	203.81
5	200210		Whiskey	25.39
5	200310		Wine*	130.32
5	200410		Other alcoholic beverages	45.72
4	ALCAWAY		Away from home	222.12
5	BEERNALE		Beer and ale	97.76
6	200511		Beer and ale at fast food, take-out, etc	19.39
6	200512		Beer and ale at full service restaurants*	77.80
6	200513		Beer and ale at vending machines, etc	0.05
6	200516		Beer and ale at catered affairs	0.51
5	WINE		Wine	26.01
6	200521		Wine at fast food, take-out, delivery, etc	2.61
6	200522		Wine at full service restaurants*	23.34
6	200523		Wine at vending machines and mobile vendors	
6	200526		Wine at catered affairs	0.06
5	OTHALCBV		Other alcoholic beverages	98.36
6	200531		Other alcoholic bev. at fast food, take-out, etc	14.17
6	200532		Other alcoholic bev. at full service restaurants	43.87
6	200533		Other alcoholic bev. at vending machines	0.10
6	200536		Other alcoholic bev. at catered affairs	0.23
6	200900		Alcoholic beverages purchased on trips	39.99
2	SHEL&UTL	MEG	Shelter and Utilities	190.87

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
3	SHELTER	PEG	Shelter	17,017.07
4	RNTLEQ		Rented Equivalence (estimated monthly × 12)	13,332.00
4	RENTXX		Rented Dwelling (rent minus tenants ins.)*	3,251.64
4	350110		Tenants Insurance (tenants ins × 2)*	36.27
4	OTHLODGE		Other Lodging (other minus housing at school)	397.13
3	ENERUT	PEG	Energy Utilities*	1.18
3	WATERX	PEG	Water and other public services*	362.63
2	HHF&SUPP	MEG	Household Furnishings and Supplies	2.19
3	HHOPER	PEG	Household operations	610.69
4	HHPERSRV		Personal services	395.00
5	340210		Babysitting and child care*	83.82
6	340211		Child care in own home	32.61
6	340212		Child care outside own home	51.21
5	340906		Care for elderly, invalids, handicapped, etc	16.07
5	340910		Adult day care centers	1.70
5	670310		Day-care centers, nursery, and preschools*	293.41
4	HHOTHXPN		Other household expenses	215.69
5	340310		Housekeeping services*	49.32
5	340410		Gardening, lawn care service*	62.72
5	340420		Water softening service	3.34
5	340520		Household laundry and dry cleaning, sent out	0.80
5	340530		Coin-operated household laundry & dry cleaning	3.65
5	340914		Services for termite/pest control	11.20
5	340915		Home security system service fee	15.83
5	340903		Other home services	7.58
5	330511		Termite/pest control products	1.14
5	340510		Moving, storage, freight express*	33.51
5	340620		Appliance repair, including service center	12.53
5	340630		Reupholstering, furniture repair	3.61
5	340901		Repairs/rentals of lawn/garden equipment	6.17
5	340907		Appliance rental	2.09
5	340908		Rental of office equip. for nonbusiness use	0.66
5	340913		Repair of miscellaneous household equip	1.52
5	990900		Rental/installation of dishwashers/disposals	
3	HKPGSUPP	PEG	Housekeeping supplies	631.49
4	LAUNDRY		Laundry and cleaning supplies	147.87
5	330110		Soaps and detergents*	80.52
5	330210		Other laundry cleaning products	67.35
4	HKPGOTHR		Other household products	317.42
5	330310		Cleansing & toilet tissue, paper towels/napkins*	99.04
5	330510		Miscellaneous household products	143.56
5	330610		Lawn and garden supplies*	74.82
4	POSTAGE		Postage and stationery	166.20
5	330410		Stationery, stationery supplies, giftwraps*	81.08
5	340110		Postage	79.67
6	STAMP		Stamp*	75.37
6	PARPST		Parcel Post*	4.30
5	340120		Delivery services	5.46
3	TEX&RUGS	PEG	Textiles and Area Rugs	183.15
4	HHTXTILE		Household textiles	156.20
5	280110		Bathroom linens*	27.07
5	280120		Bedroom linens*	71.77
5	280130		Kitchen and dining room linens	12.25
5	280210		Curtains and draperies	21.41
5	280220		Slipcovers, decorative pillows	6.33
5	280230		Sewing materials for slipcovers, curtains, etc	15.89
5	280900		Other linens	1.49
4	FLOORCOV		Floor coverings	26.96
5	RNTCARPT		Wall-to-wall carpeting (renter)	0.01
6	230134		Wall-to-wall carpet (renter)	
6	320163		Wall-to-wall carpet (replacement) (renter)	0.01
5	320111		Floor coverings, nonpermanent*	26.94
3	FURNITUR	PEG	Furniture	509.16
4	290110		Mattress and springs*	59.98
4	290120		Other bedroom furniture	105.19
4	290210		Sofas	125.89
4	290310		Living room chairs*	60.36
4	290320		Living room tables	23.94
4	290410		Kitchen, dining room furniture*	46.49
4	290420		Infants' furniture	8.86
4	290430		Outdoor furniture	13.08

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
4	290440		Wall units, cabinets/other occasional furniture	65.38
3	MAJAPPL	PEG	Major appliances	196.71
4	230116		Dishwashers (built-in), disposals, range hoods	13.97
5	230117		Dishwasher—owned home	0.63
5	230118		Dishwasher rented home	13.34
4	300110		Refrigerators, freezers*	45.99
5	300111		Refrigerators, freezers (renter)	5.92
5	300112		Refrigerators, freezers (owned home)	40.07
4	300210		Washing machines*	27.81
5	300211		Washing machines (renter)	5.95
5	300212		Washing machines (owned home)	21.87
4	300220		Clothes dryers	19.88
5	300221		Clothes dryers (renter)	4.91
5	300222		Clothes Dryer (owned home)	14.97
4	300310		Cooking stoves, ovens*	31.99
5	300311		Cooking stoves, ovens (renter)	1.85
5	300312		Cooking stoves, ovens (owned home)	30.13
4	300320		Microwave ovens	7.64
5	300321		Microwave ovens (renter)	1.88
5	300322		Microwave ovens (owned home)	5.76
4	300330		Portable dishwasher	1.47
5	300331		Portable dishwasher (renter)	0.22
5	300332		Portable dishwasher (owned home)	1.25
4	300410		Window air conditioners	47.96
5	300411		Window air conditioners (renter)	1.48
5	300412		Window air conditioners (owned home)	5.10
5	320511		Electric floor cleaning equipment*	33.78
5	320512		Sewing machines	7.02
5	300900		Miscellaneous household appliances	0.59
3	SMAPPHWR	PEG	Small appliances, miscellaneous housewares	144.28
4	HOUSEWARE		Housewares	106.99
5	320310		Plastic dinnerware	2.53
5	320320		China and other dinnerware*	14.13
5	320330		Flatware	5.49
5	320340		Glassware	14.51
5	320350		Silver serving pieces	10.71
5	320360		Other serving pieces	1.77
5	320370		Nonelectric cookware*	21.45
5	320380		Tableware, nonelectric kitchenware	36.40
4	SMLLAPPL		Small appliances	37.29
5	320521		Small electric kitchen appliances*	26.67
5	320522		Portable heating and cooling equipment	10.62
3	MISCHHEQ	PEG	Miscellaneous household equipment	632.71
4	320120		Window coverings	24.78
4	320130		Infants' equipment	16.15
4	320140		Laundry and cleaning equip	17.62
4	320150		Outdoor equipment*	21.70
4	320210		Clocks	4.51
4	320220		Lamps and lighting fixtures	13.87
4	320231		Other household decorative items	151.27
4	320232		Telephones and accessories*	35.99
4	320410		Lawn and garden equipment*	82.56
4	320420		Power tools*	43.54
4	320901		Office furniture for home use*	8.69
4	320902		Hand tools*	12.30
4	320903		Indoor plants, fresh flowers*	47.68
4	320904		Closet and storage items	12.80
4	340904		Rental of furniture	5.16
4	430130		Luggage	5.88
4	690210		Telephone answering devices	1.25
4	690220		Calculators	1.13
4	690230		Business equipment for home use	2.18
4	320430		Other hardware	59.83
4	690242		Smoke alarms (owned home)	1.50
4	690241		Smoke alarms (renter)	0.30
4	690243		Smoke alarms (owned vacation)	
4	690245		Other household appliances (owned home)	5.03
4	690244		Other household appliances (renter)	1.03
4	320905		Miscellaneous household equipment and parts	55.97
2	APPAREL	MEG	Apparel and services	21.79
3	MENBOYS	PEG	Men and boys	502.12

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
4	MENS		Men, 16 and over	416.91
5	360110		Men's suits*	25.98
5	360120		Men's sportcoats, tailored jackets	8.66
5	360210		Men's coats and jackets*	34.18
5	360311		Men's underwear*	26.44
5	360312		Men's hosiery	15.94
5	360320		Men's nightwear	2.57
5	360330		Men's accessories	31.31
5	360340		Men's sweaters and vests	13.01
5	360350		Men's active sportswear	20.78
5	360410		Men's shirts*	90.85
5	360511		Men's pants*	110.74
5	360512		Men's shorts, shorts sets	25.89
5	360901		Men's uniforms	6.33
5	360902		Men's costumes	4.24
4	BOYS		Boys, 2 to 15	85.20
5	370110		Boys' coats and jackets	6.21
5	370120		Boys' sweaters	2.64
5	370130		Boys' shirts*	19.42
5	370211		Boys' underwear	7.26
5	370212		Boys' nightwear	1.53
5	370213		Boys' hosiery	4.10
5	370220		Boys' accessories	3.18
5	370311		Boys' suits, sportcoats, vests	1.79
5	370312		Boys' pants*	21.85
5	370313		Boys' shorts, shorts sets	7.38
5	370903		Boys' uniforms	2.82
5	370904		Boys' active sportswear	4.20
5	370902		Boys' costumes	2.82
3	WMNSGRLS	PEG	Women and girls	925.48
4	WOMENS		Women, 16 and over	809.92
5	380110		Women's coats and jackets*	84.81
5	380210		Women's dresses*	75.94
5	380311		Women's sportcoats, tailored jackets	4.87
5	380312		Women's vests and sweaters*	56.78
5	380313		Women's shirts, tops, blouses*	158.20
5	380320		Women's skirts	27.47
5	380331		Women's pants*	121.82
5	380332		Women's shorts, shorts sets	27.98
5	380340		Women's active sportswear	45.51
5	380410		Women's sleepwear	44.02
5	380420		Women's undergarments	51.96
5	380430		Women's hosiery	23.06
5	380510		Women's suits*	28.98
5	380901		Women's accessories*	43.22
5	380902		Women's uniforms	7.98
5	380903		Women's costumes	7.33
4	GIRLS		Girls, 2 to 15	115.56
5	390110		Girls' coats and jackets	9.36
5	390120		Girls' dresses and suits*	9.32
5	390210		Girls' shirts, blouses, sweaters*	21.29
5	390221		Girls' skirts and pants*	28.77
5	390222		Girls' shorts, shorts sets	9.49
5	390230		Girls' active sportswear	9.15
5	390310		Girls' underwear and sleepwear	8.42
5	390321		Girls' hosiery	4.93
5	390322		Girls' accessories	7.58
5	390901		Girls' uniforms	2.76
5	390902		Girls' costumes	4.50
3	INFANT	PEG	Children under 2	90.35
4	410110		Infant coat, jacket, snowsuit	2.38
4	410120		Infant dresses, outerwear	23.90
4	410130		Infant underwear*	50.03
4	410140		Infant nightwear, loungewear*	4.55
4	410901		Infant accessories	9.48
3	FOOTWEAR	PEG	Footwear	391.47
4	400110		Men's footwear*	125.68
4	400210		Boys' footwear	53.75
4	400310		Women's footwear*	171.42
4	400220		Girls' footwear	40.62
3	OTHAPPRL	PEG	Other apparel products and services	288.37

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
4	420110		Material for making clothes	8.83
4	420120		Sewing patterns and notions	8.47
4	430110		Watches*	24.45
4	430120		Jewelry*	130.18
4	440110		Shoe repair and other shoe service	1.25
4	440120		Coin-operated apparel laundry/dry cleaning*	47.64
4	440130		Alteration, repair and tailoring of apparel	6.19
4	440140		Clothing rental	3.06
4	440150		Watch and jewelry repair	4.28
4	440210		Apparel laundry & cleaning not coin-operated*	53.51
4	440900		Clothing storage	0.50
2	TRANS	MEG	Transportation	843.20
3	MOTVEHCO	PEG	Motor Vehicle Costs	4,545.54
4	VEHPURCH		Vehicle purchases (net outlay)	3,659.
5	NEWCARS		Cars and trucks, new	1,873.20
6	450110		New cars*	865.68
6	450210		New trucks	1.52
5	USEDCARS		Cars and trucks, used	1,717.02
6	460110		Used cars	748.86
6	460901		Used trucks	968.16
5	OTHVEHCL		Other vehicles	69.17
6	450220		New motorcycles	38.17
6	450900		New aircraft	4.13
6	460902		Used motorcycles	26.87
6	460903		Used aircraft	
4	VEHFINCH		Vehicle finance charges	488.57
5	510110		Automobile finance charges*	232.74
5	510901		Truck finance charges	233.70
5	510902		Motorcycle and plane finance charges	3.57
5	850300		Other vehicle finance charges	18.55
4	LEASVEH		Leased vehicles	221.66
5	450310		Car lease payments	111.26
5	450313		Cash downpayment (car lease)	7.71
5	450314		Termination fee (car lease)	0.50
5	450410		Truck lease payments	100.58
5	450413		Cash downpayment (truck lease)	0.79
5	450414		Termination fee (truck lease)	0.82
4	VEHXP&LV		Other Vehicle Expenses and Licenses	175.91
5	520110		State & Local Registration*	102.22
6	520111		Vehicle reg. state	91.84
6	520112		Vehicle reg. local	10.38
5	520310		Driver's license	8.89
5	520410		Vehicle inspection (added to S&L registration)	9.55
5	PARKING		Parking fees	21.70
6	520531		Parking fees in home city, excl. residence	18.01
6	520532		Parking fees, out-of-town trips	3.69
5	520541		Tolls	11.27
5	520542		Tolls on out-of-town trips	3.66
5	520550		Towing charges	5.46
5	620113		Automobile service clubs	13.16
3	GASOIL	PEG	Gasoline and motor oil	15.14
4	470111		Gasoline*	1,376.17
4	470112		Diesel fuel	15.41
4	470113		Gasoline on out-of-town trips	96.39
4	470114		Gasohol	
4	470211		Motor oil	11.20
4	470212		Motor oil on out-of-town trips	0.98
3	CARP&R	PEG	Maintenance and repairs	791.12
4	CARPAR		Maintenance and Repair Parts	206.75
5	470220		Coolant, additives, brake, transmission fluids	4.25
5	480110		Tires—purchased, replaced, installed*	117.97
5	480213		Parts, equipment, and accessories*	73.71
5	480214		Vehicle audio equipment, excluding labor	2.87
5	480212		Vehicle products	7.95
4	CARREP		Maintenance and Repair Service*	584.37
5	490000		Misc. auto repair, servicing	45.46
5	490110		Body work and painting	31.22
5	490211		Clutch, transmission repair	46.87
5	490212		Drive shaft and rear-end repair	7.56
5	490221		Brake work, including adjustments	50.15
5	490231		Repair to steering or front-end	15.58

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
5	490232		Repair to engine cooling system	19.70
5	490311		Motor tune-up	42.41
5	490312		Lube, oil change, and oil filters	74.18
5	490313		Front-end alignment, wheel balance, rotation	11.12
5	490314		Shock absorber replacement	3.55
5	490316		Gas tank repair, replacement	4.01
5	490318		Repair tires and other repair work	55.99
5	490319		Vehicle air conditioning repair	14.52
5	490411		Exhaust system repair	13.39
5	490412		Electrical system repair	33.41
5	490413		Motor repair, replacement	100.70
5	490900		Auto repair service policy	14.56
3	500110	PEG	Vehicle insurance*	976.09
3	RENTVEH	PEG	Rented vehicles	28.60
3	PUBTRANS	PEG	Public transportation	589.71
4	530110		Airline fares*	399.38
4	530210		Intercity bus fares	16.95
4	530510		Intercity train fares	23.94
4	530901		Ship fares	36.89
4	LOCTRANS		Local Transportation (Not a CES item)	112.56
5	530311		Intracity mass transit fares	65.35
5	530312		Local trans.on out-of-town trips	14.00
5	530411		Taxi fares and limousine service on trips	8.22
5	530412		Taxi fares and limousine service*	24.15
5	530902		School bus	0.84
2	MEDICAL	MEG	Medical	2,48.91
3	HEALTINS	PEG	Health insurance*	1,337.89
4	COMHLTIN		Commercial health insurance	270.98
5	580111		Traditional fee for service health plan (not BCBS)	90.77
5	580113		Preferred provider health plan (not BCBS)	180.21
4	BCBS		Blue Cross, Blue Shield	416.23
5	580112		Traditional fee for service health plan (BCBS)	79.25
5	580114		Preferred provider health plan (BCBS)	141.02
5	580312		Health maintenance organization (BCBS)	144.67
5	580904		Commercial Medicare supplement (BCBS)	45.55
5	580906		Other health insurance (BCBS)	5.74
4	580311		Health maintenance organization (not BCBS)	326.02
4	580901		Medicare payments	177.44
4	COMEDOTH		Commercial Medicare suppl & health insurance	147.21
5	580903		Commercial Medicare supplement (not BCBS)	84.91
5	580905		Other health insurance (not BCBS)	62.30
3	MEDSERVS	PEG	Medical services	689.24
4	560110		Physician's services*	172.07
4	560210		Dental services*	264.62
4	560310		Eyecare services	43.17
4	560400		Service by professionals other than physician	41.89
4	560330		Lab tests, x-rays	31.41
4	570110		Hospital room*	30.19
4	570210		Hospital service other than room	54.53
4	570240		Medical care in retirement community	
4	570220		Care in convalescent or nursing home	30.38
4	570902		Repair of medical equipment	3.91
4	570230		Other medical care services	17.07
3	DRUGS&ME	PEG	Drugs and Medical Supplies	456.78
4	DRUGS		Drugs	359.87
5	550210		Nonprescription drugs*	62.53
5	550410		Nonprescription vitamins	31.48
5	540000		Prescription drugs*	265.86
4	MEDSUPPL		Medical supplies	96.91
5	550110		Eyeglasses and contact lenses*	47.34
5	550340		Hearing aids	12.32
5	550310		Topicals and dressings*	26.60
5	550320		Medical equipment for general use	2.87
5	550330		Supportive and convalescent medical equip	5.23
5	570901		Rental of medical equipment	1.31
5	570903		Rental of supportive, convalescent equipment	1.24
2	RECREATN	MEG	Recreation	246.45
3	FEESADM	PEG	Fees and admissions	553.89
4	610900		Recreation expenses, out-of-town trips	31.27
4	620111		Social, recreation, civic club membership*	86.07
4	620121		Fees for participant sports*	83.62

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
4	620122		Participant sports, out-of-town trips	23.03
4	620211		Movie, theater, opera, ballet*	113.81
4	620212		Movie, other admissions, out-of-town trips	57.96
4	620221		Admission to sporting events	31.87
4	620222		Admission to sports events, out-of-town trips	19.32
4	620310		Fees for recreational lessons*	75.66
4	620903		Other entertainment services, out-of-town trips	31.27
3	TVAUDIO	PEG	Television, radios, sound equipment	369.52
4	TELEVSN		Televisions	209.09
5	310110		Black and white tv	0.50
5	310120		Color tv—console	56.12
5	310130		Color tv—portable, table model*	36.18
5	310210		VCR's and video disc players*	33.37
5	310220		Video cassettes, tapes, and discs*	50.40
5	310230		Video game hardware and software	27.02
5	340610		Repair of tv, radio, and sound equipment	4.48
5	340902		Rental of televisions	1.01
4	AUDIO		Radios, sound equipment	160.43
5	310311		Radios	4.83
5	310312		Phonographs	
5	310313		Tape recorders and players	8.59
5	310320		Sound components and component systems*	19.00
5	310331		Miscellaneous sound equipment	0.14
5	310332		Sound equipment accessories	7.64
5	310334		Satellite dishes	1.38
5	310341		CD, tape, record and video mail order clubs	7.87
5	310342		Records, CDs, audio tapes, needles*	39.92
5	340905		Rental of VCR, radio, and sound equipment	0.28
5	610130		Musical instruments and accessories	16.14
5	620904		Rental and repair of musical instruments	5.43
5	620912		Rental of video cassettes, tapes, & discs*	49.21
3	PETSPLAY	PEG	Pets, toys, and playground equipment	397.06
4	PETS		Pets	282.85
5	610310		Pet food*	116.44
5	610320		Pet purchase, supplies, medicine	76.66
5	620410		Pet services	21.50
5	620420		Vet services*	68.24
4	610110		Toys, games, hobbies, and tricycles*	112.26
4	610120		Playground equipment	1.96
3	ENTEROTH	PEG	Other entertainment supplies, equipment, and svcs	339.69
4	UNMTRBOT		Unmotored recreational vehicles	41.92
5	600121		Boat without motor and boat trailers	6.68
5	600122		Trailer and other attachable campers	35.24
4	PWRSPVEH		Motorized recreational vehicles*	128.92
5	600141		Purchase of motorized camper	87.77
5	600142		Purchase of other vehicle	11.81
5	600132		Purchase of boat with motor	29.35
4	RNTSPVEH		Rental of recreational vehicles	2.95
5	520904		Rental noncamper trailer	0.02
5	520907		Boat and trailer rental out-of-town trips	0.28
5	620909		Rental of campers on out-of-town trips	0.77
5	620919		Rental of other vehicles on out-of-town trips	1.60
5	620906		Rental of boat	0.21
5	620921		Rental of motorized camper	
5	620922		Rental of other RV's	0.06
4	600110		Outboard motors	1.58
4	520901		Docking and landing fees	4.05
4	RECEQUIP		Sports, recreation and exercise equipment	99.06
5	600210		Athletic gear, game tables, exercise equip*	37.45
5	600310		Bicycles	8.05
5	600410		Camping equipment	6.74
5	600420		Hunting and fishing equipment	25.21
5	600430		Winter sports equipment	3.20
5	600901		Water sports equipment	3.19
5	600902		Other sports equipment	13.42
5	620908		Rental and repair of misc. sports equipment	1.80
4	PHOTOEQ		Photographic equipment, supplies and services	54.86
5	610210		Film*	11.15
5	610220		Other photographic supplies	0.30
5	620330		Film processing*	16.06
5	620905		Repair and rental of photographic equipment	0.21

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
5	610230		Photographic equipment	16.78
5	620320		Photographer fees	10.35
4	610901		Fireworks	1.21
4	610902		Souvenirs	0.10
4	610903		Visual goods	0.20
4	620913		Pinball, electronic video games	4.85
3	PERSPROD	PEG	Personal care products	352.04
4	640110		Hair care products*	76.06
4	640120		Nonelectric articles for the hair	9.72
4	640130		Wigs and hairpieces	1.68
4	640210		Oral hygiene products, articles	37.09
4	640220		Shaving needs	24.28
4	640310		Cosmetics, perfume, bath preparation*	149.89
4	640410		Deodorants, feminine hygiene, misc. pers. care	43.13
4	640420		Electric personal care appliances	10.20
3	PERSSERV	PEG	Personal care services	291.50
4	650310		Personal care service*	290.98
4	650900		Repair of personal care appliances	0.52
3	READING	PEG	Reading	157.75
4	590110		Newspapers	63.41
5	590111		Newspaper subscriptions*	49.01
5	590112		Newspaper, non-subscriptions*	14.40
4	590210		Magazines	29.80
5	590211		Magazine subscriptions*	19.20
5	590212		Magazines, non-subscriptions*	10.60
4	590900		Newsletters	10.02
4	590220		Books thru book clubs	54.38
4	590230		Books not thru book clubs*	0.13
4	660310		Encyclopedia and other sets of reference books	229.19
2	EDU&COMM	MEG	Education and Communication	119.98
3	EDUCATN	PEG	Education	94.35
4	670210		Elementary and high school tuition*	25.63
4	660210		School books, supplies, for elem. and H.S	19.27
3	COMMICAT	PEG	Communications	1,270.01
4	PHONE		Telephone services	814.13
5	270101		Telephone svcs in home city, excl. car phones*	428.43
5	270102		Telephone services for mobile car phones*	1.71
5	270103		Pager service	25.73
5	270104		Phone cards	143.61
4	690114		Computer information services*	571.65
4	270310		Community antenna or cable tv*	189.93
3	COMP&SVC	PEG	Computers and Computer Services	5.49
4	690113		Repair of computer systems for nonbus. use	164.21
4	690111		Computers & computer hardware nonbus. use*	20.23
4	690112		Computer software/accessories for nonbus. use	64.05
2	MISCMEG	MEG	Miscellaneous	219.08
3	TOBACCO	PEG	Tobacco products and smoking supplies	202.50
4	630110		Cigarettes*	15.58
4	630210		Other tobacco products	1.00
4	630220		Smoking accessories	817.01
3	MISC	PEG	Miscellaneous	18.84
4	620925		Miscellaneous fees	51.71
4	620926		Lotteries and pari-mutuel losses	129.86
4	680110		Legal fees*	63.14
4	680140		Funeral expenses*	4.20
4	680210		Safe deposit box rental	27.28
4	680220		Checking accounts, other bank service charges	17.58
4	680901		Cemetery lots, vaults, maintenance fees	55.94
4	680902		Accounting fees*	43.25
4	680903		Miscellaneous personal services	292.74
4	710110		Credit card interest and annual fees*	42.54
4	900001		Occupational expenses (old code)	63.50
4	900002		Occupational expenses	0.06
4	790600		Expenses for other properties	6.36
4	880210		Interest paid, home equity line of credit	545.95
4	620115		Shopping club membership fees	466.70
3	INSPENSN	PEG	Personal insurance and pensions	442.01
4	LIFEINSR		Life and other personal insurance*	24.68
5	700110		Life, endowment, annuity, other personal ins	49.26
5	002120		Other nonhealth insurance	
4	PENSIONS		Pensions and Social Security	

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items]

Level	Code	Group	Category name	Expenditures
5	800910		Deductions for government retirement*	116.12
5	800920		Deductions for railroad retirement	3.01
5	800931		Deductions for private pensions	513.91
5	800932		Non-payroll deposit to retirement plans	417.89
5	800940		Deductions for Social Security	3.32

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BILLING CODE 6325-39-P

SECURITIES AND EXCHANGE COMMISSION**Proposed Collections; Comment Request**

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0123.

Extensions:

Form 3; OMB Control No. 3235-0104; SEC File No. 270-125.

Form 4; OMB Control No. 3235-0287; SEC File No. 270-126.

Form 5; OMB Control No. 3235-0362; SEC File No. 270-323.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) Forms 3, 4 and 5 (17 CFR 249.103, 249.104 and 249.105) are filed by insiders of public companies that have a class of securities registered under Section 12 of the Exchange Act (15 U.S.C. 78l). Form 3 is an initial statement of beneficial ownership of securities, Form 4 is a statement of changes in beneficial ownership of securities and Form 5 is an annual statement of beneficial ownership of securities. Approximately 29,000 insiders file Form 3 annually and it takes approximately .5 hours to prepare for a total of 14,500 annual burden hours. Approximately 225,000 insiders file Form 4 annually and it takes approximately .5 hours to prepare for a total of 112,500 annual burden hours. Approximately 9,000 insiders file Form 5 annually and it takes approximately one hour to prepare for a total of 9,000 annual burden hours.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

September 5, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-17940 Filed 9-11-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION**Request for Public Comment**

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 8c-1; SEC File No. 270-455; OMB Control No. 3235-0514.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection

of information to the Office of Management and Budget for approval.

Rule 8c-1 (17 CFR 240.8c-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer.¹ Pursuant to Rule 8c-1, respondents must collect information necessary to prevent the hypothecation of customer accounts in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule and to advise customers of the rule's protections.

There are approximately 142 respondents per year (*i.e.*, broker-dealers that conducted business with the public, filed Part II of the FOCUS Report, did not claim an exemption from the Reserve Formula computation, and reported that they had a bank loan during at least one quarter of the current year) that require an aggregate total of 3,195 hours to comply with the rule. Each of these approximately 142 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 6,390 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 3,195 burden hours. The approximate cost per hour is \$56, resulting in a total cost of compliance for the respondents of

¹ See Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971).

approximately \$178,920 (3,195 hours @ \$56 per hour).

Written 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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted within 60 days of this notice.

Dated: September 5, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-17941 Filed 9-11-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56354; File No. SR-Amex-2007-40]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Options Quote Size Mitigation

September 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 24, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Amex. On August 24, 2007, the Exchange filed Amendment No. 1 to the proposed rule

change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to continue the options market data size mitigation pilot program ("Options Size Mitigation" or "Pilot Program") from March 6, 2007 through March 5, 2008.

The text of the proposed rule change is available at (<http://www.amex.com>), at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to continue the effectiveness of Options Size Mitigation from March 6, 2007 through March 5, 2008. The Commission approved Options Size Mitigation on a four (4) month pilot basis on November 4, 2005.⁴ The Pilot Program was extended on March 25, 2006 to March 5, 2007.⁵

The purpose of the proposal is to continue the effectiveness of the Pilot Program for the benefit of the Exchange and the marketplace by helping to enhance the Exchange's ability to process an ever increasing volume of incoming options quotes.⁶ The

³ Amendment No. 1 superseded and replaced the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 52741 (November 4, 2005), 70 FR 69369 (November 15, 2005) (SR-Amex-2005-115) ("Approval Order").

⁵ See Securities Exchange Act Release No. 53867 (May 25, 2006), 71 FR 31234 (June 1, 2006) (SR-Amex-2006-50).

⁶ In January 2000, OPRA capacity was 3,000 messages per second ("MPS") with an expectation during the year to increase to 8,000 and 12,000 MPS, respectively. As an example, one-minute and

Exchange believes that the continuation of Options Size Mitigation will help to enhance the Exchange's ability to manage market data traffic.

Under Options Size Mitigation, incoming market data is filtered prior to being forwarded to Exchange floor trading systems. When in effect, Options Size Mitigation accordingly filters market data by not processing incoming quotes (*i.e.* away market quotes) with size changes below a variable percent. However, Amex systems always maintain and display Amex quotations with accurate size regardless of whether Options Size Mitigation is in effect.

As the Exchange has gained experience with Options Size Mitigation and increased quote traffic rates in recent months, a more targeted approach has been adopted. In the case of market data rate spikes, the Exchange will use Options Size Mitigation as needed. This typically occurs during the opening and when significant economic/market sensitive news is expected to be released. The Exchange submits that the initial Options Size Mitigation filtering level is always set at 10% at the start of the trading day. If the Exchange experiences quote traffic that is trending near system capacity thresholds, the Exchange would adjust the filtering level upward from 10%, as necessary. As set forth in the Approval Order, the Exchange has the ability to increase the filtering level in 10% level increments as warranted. It is common for the Exchange to adjust the filtering level to 20% or 30%. The appropriate filtering level is determined by the head of the Exchange's Floor Operations (or his designee), in conjunction with two (2) Senior Floor Officials.

As was the case in the original Pilot Program, the Exchange believes that Options Size Mitigation offers greater ability and flexibility to manage inbound quote traffic, especially in light of the Penny Quoting Pilot Program.⁷ Given the exponential increase in options quote traffic rates in recent years, the Exchange believes that the continuation of Options Size Mitigation is a necessary tool in connection with the processing of quote traffic.

Based on the Exchange's experience to date, the Exchange believes that it is

five-minute peak output rates in March 2000 were 3,515 and 3,393 MPS, respectively. OPRA in 2001 increased system capacity to 24,000 MPS. Moving forward to February 9, 2007, the system capacity was 360,000 MPS with one-second, 15-second and one-minute peak output rates of 216,086 (12/22/2006), 199,731 MPS (12/22/2006) and 182,957 MPS (12/22/2006), respectively. OPRA increased system capacity to 359,000 MPS on March 13, 2007.

⁷ See Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR-Amex-2006-106).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

appropriate to continue the Pilot Program from March 6, 2007 through March 5, 2008.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of Section 6(b)(5)⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Amex-2007-40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-Amex-2007-40. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Amex-2007-40 and should be submitted on or before October 3, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the Exchange's proposal to retroactively extend the Options Size Mitigation from March 6, 2007 to March 5, 2008 is consistent with the requirements of the Section 6 of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹²

The Commission believes that the Options Size Mitigation should

continue uninterrupted to enhance the Amex's ability to process an increasing volume of incoming options quotes during high option quote volume periods and peaks. The Commission notes that Options Size Mitigation has operated on a pilot basis and the Amex believes it is functioning as intended.

The Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will allow the Amex to continue to operate the Options Size Mitigation program and thus, should facilitate the processing of incoming options quotes. The Commission notes that no comments were received in connection with the approval of the Pilot Program and no comments have been received during the operation of the Pilot Program. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹³ for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change, as amended (SR-Amex-2007-40), is hereby approved on an accelerated basis for a period to expire on March 5, 2008.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-17935 Filed 9-11-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56357; File No. SR-CBOE-2007-101]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Transaction Fees for Credit Default Basket Options

September 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹⁰ 15 U.S.C. 78f.

¹¹ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 29, 2007, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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 this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to establish fees for transactions in Credit Default Basket Options (“CDBOs”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/Legal>), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently received approval to list and trade CDBOs, which are cash-settled call options based on the occurrence of a Credit Event in one, some, or all of the Basket Components.⁵

The purpose of this rule change is to establish transaction fees for CDBOs.

The transaction fees shall be \$0.20 per contract for Market-Makers, Designated Primary Market-Makers, and Remote Market-Makers; \$0.20 per contract for member firm proprietary transactions; \$0.25 per contract for manually executed broker-dealer transactions; \$0.45 per contract for electronically executed broker-dealer transactions (*i.e.*, executions of broker-dealer orders that are automatically executed on the CBOE Hybrid Trading System);⁶ and \$0.85 per contract for public customer transactions. In addition, the Exchange’s Liquidity Provider Sliding Scale⁷ shall apply to transaction fees in CDBOs, but the Exchange’s Marketing Fee⁸ shall not apply. The Exchange believes the rule change will further the Exchange’s goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization’s Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the

Act¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2007-101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 56275 (August 17, 2007), 72 FR 47097 (August 22, 2007) (order approving SR-CBOE-2007-26 to list and trade CDBOs).

⁶ Broker-dealer manual and electronic transaction fees will apply to executed broker-dealer orders (orders with “B” origin code), non-member market-maker orders (orders with “N” origin code), and orders from specialists in the underlying security (orders with “Y” origin code).

⁷ See Footnote 10 of the Fees Schedule.

⁸ See Footnote 6 of the Fees Schedule.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-101 and should be submitted on or before October 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-17938 Filed 9-11-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56355; File No. SR-ISE-2007-75]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Non-ISE Market Maker Fees

September 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 23, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees regarding its non-ISE market maker fees. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and at <http://www.iseoptions.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to lower the Exchange's non-ISE market maker ("FARMM") fees for certain orders. The Exchange currently charges \$0.37 per contract, plus a \$0.03 per contract comparison fee, for FARMM orders.⁵ FARMM orders are orders that are sent to the Exchange by an Electronic Access Member on behalf of a non-ISE market maker. In order to encourage FARMMs to provide liquidity in the Exchange's Facilitation and Solicitation Mechanisms, we propose to charge a discounted transaction fee of \$0.16 per contract for FARMM orders entered in the Facilitation and Solicitation Mechanisms, plus a \$0.03 per contract comparison fee, for such orders. All other FARMM orders will continue to be charged the standard fee of \$0.37 per contract, plus a comparison fee of \$0.03 per contract.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)⁶ of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(2)⁸ thereunder because it establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2007-75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-75. 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

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 55897 (June 12, 2007), 72 FR 33546 (June 18, 2007).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2007-75 and should be submitted on or before October 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-17936 Filed 9-11-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56367; File No. SR-ISE-2007-82]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

September 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 4, 2007, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder⁴ which renders it effective upon filing

with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on one "Premium Product."⁵ The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and at the Exchange's Web site (<http://www.ise.com>).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the iShares Dow Jones U.S. Broker-Dealers Index Fund ("IAI").⁶ The Exchange represents that IAI is eligible for options trading

⁵ "Premium Products" is defined in the ISE Schedule of Fees as the products enumerated therein.

⁶ iShares® is a registered trademark of Barclays Global Investors, N.A. ("BGI"), a majority-owned subsidiary of Barclays Bank PLC. "Dow Jones" is a service mark of Dow Jones & Company, Inc. ("Dow Jones") and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. iShares Dow Jones U.S. Broker-Dealers Index Fund ("IAI") is not sponsored, endorsed, issued, sold or promoted by Dow Jones. BGI and Dow Jones have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IAI or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IAI or with making disclosures concerning options on IAI under any applicable federal or state laws, rules or regulations. BGI and Dow Jones do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

because it constitutes "Fund Shares," as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on IAI.⁷ The amount of the execution fee and comparison fee for products covered by this filing shall be \$0.15 and \$0.03 per contract, respectively, for all Public Customer Orders⁸ and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.⁹ Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be \$0.37 and \$0.03 per contract, respectively. Further, since options on IAI are multiply-listed, the Payment for Order Flow fee shall apply to this product. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4),¹¹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁷ These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). See Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR-ISE-2007-55).

⁸ "Public Customer Order" is defined in Exchange Rule 100(a)(39) as an order for the account of a "Public Customer." "Public Customer" is defined in Exchange Rule 100(a)(38) as a person that is not a broker or dealer in securities.

⁹ The execution fee is currently between \$.21 and \$.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$.03 per contract side.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because it establishes or changes a due, fee, or other charge applicable only to a member, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(2)¹³ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2007-82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2007-82 and should be submitted on or before October 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-17937 Filed 9-11-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56368; File No. SR-ISE-2007-81]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

September 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 4, 2007, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder⁴ which renders it effective upon filing

with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to remove the surcharge fee for transactions in options on the iShares Lehman Brothers 1-3 Year Treasury Bond Fund, the iShares Lehman Brothers 7-10 Year Treasury Bond Fund and the iShares Lehman Brothers 20+ Year Treasury Bond Fund. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and at the Exchange's Web site (<http://www.ise.com>).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to remove the surcharge fee previously adopted for transactions in options on the iShares Lehman Brothers 1-3 Year Treasury Bond Fund ("SHY"), the iShares Lehman Brothers 7-10 Year Treasury Bond Fund ("IEF"), and the iShares Lehman Brothers 20+ Year Treasury Bond Fund ("TLT").⁵ The Exchange is proposing to remove the surcharge fee from its Schedule of Fees because it no longer pays a license fee to Lehman Brothers, Inc. in connection with transactions in options on SHY, IEF, and TLT. Accordingly, there is no longer a need for this surcharge fee. The Exchange will, however, continue to charge an execution fee and a comparison fee for transactions in options on SHY, IEF and TLT.

⁵ See Securities Exchange Act Release No. 49755 (May 21, 2004), 69 FR 30970 (June 1, 2004).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 19b-4(f)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because it establishes or changes a due, fee, or other charge applicable only to a member, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(2)⁷ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2007-81 on the subject line.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 19b-4(f)(2).

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2007-81 and should be submitted on or before October 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010-01-P

⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56370; File No. SR-NYSE-2007-81]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 104 (Dealings by Specialists)

September 6, 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 September 5, 2007, the New York Stock Exchange, LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 104(e) to modify the conditions that govern the ability of the specialists to provide price improvement pursuant to NYSE Rule 104(b)(i)(H).⁵ The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange notes that on March 22, 2006, the Commission approved a proposed rule change to permit the Exchange to establish the NYSE HYBRID MARKETSM ("Hybrid Market"). See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05). Included in the proposed rule change were Exchange rules governing specialist algorithmic systems, including Rules 104(b)(i)(H) and 104(e).

statements may be examined at the places specified in Item IV below. NYSE has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the proposed rule change, the Exchange seeks to amend Exchange Rule 104(e) to modify the conditions that govern the ability of the specialists to provide price improvement pursuant to NYSE Rule 104(b)(i)(H). The Exchange seeks to amend Rule 104(e) to allow the specialist to provide price improvement to an order when the specialist is represented in a meaningful amount in the bid with respect to price improvement provided to an incoming sell order and in the offer with respect to price improvement provided to an incoming buy order without minimum trade price parameters based on the quotation spread.

Current Price Improvement Conditions. Pursuant to Exchange Rule 104(b)(i)(H), a specialist trading message to provide price improvement to an order is subject to the conditions set forth in paragraph (e) of Exchange Rule 104. Currently, Exchange Rule 104(e) sets forth the requirements for specialist algorithmic price improvement, which include minimum trade price parameters based on the quotation spread, as long as the specialist is represented in the Exchange quotation in a meaningful amount as defined in the rule.⁶

Pursuant to Rule 104(e), specialists may price improve all or part of an incoming order, as follows:

- (i) The specialist is represented in the bid if buying and the offer if selling; and
- (ii) Where the quotation spread is three–five cents, algorithms must provide price improvement of at least two cents; or
- (iii) Where the quotation spread is more than five cents, algorithms must provide price improvement of at least three cents; or
- (iv) where the quotation spread is two cents, algorithms must provide price improvement of one cent.

Examples:

- (1) If the Exchange quotation is 20.10–20.15, and the specialist is represented

in both the bid and offer, the algorithm can provide price improvement by buying at 20.12, and selling at 20.13.

(2) If the Exchange quotation is 20.10–20.16, and the specialist is represented in both the bid and the offer, the algorithm can buy at 20.13 and sell at 20.13.

(3) If the Exchange quotation is 20.10–20.12, and the specialist is represented in both the bid and the offer, the algorithm can buy at 20.11 and sell at 20.11.

Proposal to Amend Price Improvement Parameters. The Hybrid Market rules, including those identified above, were implemented in a series of phases beginning with a pilot on December 14, 2005 through February 27, 2007. During the implementation process, the Exchange continually reviewed the operation of the Hybrid Market and changes in the behavior of market participants resulting from the new rules in order to assess whether the rules resulted in operations as envisioned by the Hybrid Market initiative. As a result of this continual review, NYSE amended certain rules to better accomplish the goals intended with the creation of the Hybrid Market.⁷

The Exchange states that it proposed the price improvement parameters in an attempt to balance the goals of preserving incentives for the limit orders on the Display Book to establish the best price and of encouraging price improvement for incoming orders. The Exchange believed that the benefit of providing meaningful price improvement to incoming orders under such circumstances would outweigh the potential disincentives to post aggressive limit orders.

⁷ See, Securities Exchange Act Release Nos. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR–NYSE–2006–65) (amendment to clarify certain definitions and systematic processing of certain orders in the Hybrid Market); 55316 (February 20, 2007), 72 FR 8825 (February 27, 2007) (SR–NYSE–2007–14) (amendment of Exchange Rule 70.30 in order to remove the concept of a Crowd being “specific areas on the Floor where Floor brokers are generally able to see and hear the business” conducted at each post/panel to “specific identifiable areas where Floor brokers are able to conduct business at each post/panel within the Crowd”); 54427 (September 12, 2006), 71 FR 54862 (September 19, 2006) (SR–NYSE–2006–58) (amendment of Exchange Rule 70.30 to remove the concept of a Crowd as “any five contiguous panels” to “specific identifiable areas on the Floor where Floor brokers are generally able to see and hear the business conducted at each post/panel within the Crowd”); and 54086 (June 30, 2006), 71 FR 38953 (July 10, 2006) (SR–NYSE–2006–24) (amendment to Exchange Rule 104(d)(i) to conform the minimum display requirements for reserve interest for specialists and Floor brokers such that specialists, like Floor brokers, only be required to provide at least 1,000 shares displayed interest at the bid and offer in order to have reserve interest on that side of the quote).

At the time these parameters were included in Exchange Rule 104, the Exchange believed that the stated parameters would discourage the specialist from posting a quote that would improve the best bid or offer by one cent, thus effectively stepping ahead of other liquidity providers to get price priority for execution (*i.e.*, “Penny-ing”).

According to NYSE, a review of its Hybrid Market has demonstrated that specialists’ provision of price improvement has diminished. At the same time, other market participants who may have historically competed with the specialist to provide price improvement are doing so less frequently than before.⁸ As a result, the Exchange’s level of price improvement is at a historic low.

It is the view of the Exchange that if the frequency of price improvement for customers is meaningfully increased and the deployment of additional provisional liquidity is sufficiently encouraged, enhanced market quality will result. It is also the Exchange’s view that encouraging specialist firms and their on- and off-Floor counterparts to compete at and inside the national best bid or offer should result in lower intra-day volatility, further enhancing market quality and depth.

Moreover, according to NYSE, the Exchange’s review of its Hybrid Market also has demonstrated that, since the inception of the Hybrid Market, the NYSE quote spread has narrowed.⁹ As a result, it is the Exchange’s view that the price improvement parameters by which the specialists must abide are no longer warranted, and are in fact unnecessarily burdensome and counter-productive.

The Exchange further believes that the concerns over Penny-ing are outdated. Specifically, the average quoted spread of 96% of the daily volume in NYSE-listed securities is five cents or less. Price improvement in the amount of a penny in these securities is the equivalent of 20% price improvement where the spread is five cents to as much as 100% price improvement where the spread is one cent. Today,

⁸ The Exchange reviewed statistics related to price improvement by specialists and other market participants for July 2006 and July 2007. It showed that the rate of specialist price improvement in July 2006 was 1.47% as compared to 0.03% in July 2007. In addition, the price improvement offered by other market participants was 10.66% in July 2006 and 1.39% in July 2007.

⁹ See NYSE Completes Hybrid Market Phase III Activation (January 24, 2007) at www.nyse.com/press/1169637018870.html; see also, Hybrid Market Performance and Execution Quality Very Positive, NYSE Says (November 2, 2006) at www.nyse.com/press/1162466220165.html.

⁶ Exchange Rule 104(e)(ii) defines meaningful amount as at least 1,000 shares for the 100 most active securities on the Exchange (as the Exchange from time to time shall determine), based on average daily volume, and at least 500 shares for all other securities on the Exchange.

several other market centers already provide price improvement in sub-penny increments to their customers.¹⁰ Given the current low overall price improvement being generated in NYSE-listed securities, the Exchange firmly believes that amending Rule 104(e) will lead directly to enhanced market quality.

Accordingly, the Exchange proposes to amend Exchange Rule 104 to modify the conditions that govern the operation of the specialist's algorithmic trading message to allow the specialist to provide price improvement, without minimum trade price parameters based on the quotation spread, to an order as set forth in paragraph (e) when the specialist is represented in a meaningful amount in the bid with respect to price improvement provided to an incoming sell order and in the offer with respect to price improvement provided to an incoming buy order. As such the Exchange seeks to delete subsections (e)(i)(A)–(e)(i)(D) of the current rule. Pursuant to the proposed rule, the price improvement to be supplied by the specialist must be at least one cent.

The Exchange expects that this proposed rule change will prove beneficial for customers sending orders to the Exchange through added liquidity, increased price improvement in frequency, and even further decreased effective spreads.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁰ The Exchange states that, included in the market centers that currently provide price improvement in sub-penny increments are the Boston Stock Exchange, National Stock Exchange, Chicago Stock Exchange, NASDAQ, and NYSE Arca.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (f)(6) of Rule 19b–4 thereunder.¹⁴

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.¹⁵ However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to encourage price improvement while still requiring specialists to be represented in a meaningful amount in the bid or offer. The Commission also notes that the proposed elimination of the minimum price improvement parameters based on the quotation spread is consistent with the rules of other exchanges.¹⁶ Therefore, the Commission designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b–4(f)(6).

¹⁵ 17 CFR 240.19b–4(f)(6)(iii). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b–4(f)(6)(iii).

¹⁶ See, e.g., Amex Rule 131–AEMI(q) and NYSE Arca Rule 7.31(h)(4).

¹⁷ For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NYSE–2007–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–81 and should be submitted on or before October 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-17947 Filed 9-11-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56360; File No. SR-Phlx-2007-61]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Fees for U.S. Dollar-Settled Foreign Currency Options

September 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 15, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. On August 30, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Summary of Index Option and U.S. Dollar-Settled Foreign Currency Option Charges ("Fee Schedule") to cap U.S. dollar-settled foreign currency option transaction charges applicable to customer executions at 10,000 contracts per trade per side. Specifically, on the Exchange's Fee Schedule, the option transaction charge applicable to customer executions for U.S. dollar-settled foreign currency option transactions would be amended to add the following: Subject to a maximum charge of \$4,000 per trade per side for U.S. dollar-settled foreign currency transactions. This change reflects the proposed 10,000 contract cap multiplied by the current \$.40 per contract charge. This proposal is scheduled to become

effective for trades settling on or after August 16, 2007.

The text of the proposed rule change is available on the Exchange's Web site at http://www.Phlx.com/exchange/phlx_rule_fil.html, at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to raise revenue by attracting to the Exchange large U.S. dollar-settled foreign currency option trades. By adopting a maximum option transaction charge of \$4,000 per trade per side as described above, the Exchange believes that additional order flow may be directed to the Exchange. Specifically, the Exchange seeks to increase the number of U.S. dollar-settled foreign currency option customer transactions on the Exchange. The Exchange began trading U.S. dollar-settled foreign currency options in January 2007 and seeks to increase business in this product line.³

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁵ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that it is equitable to apply the proposed cap on customer U.S. dollar-settled foreign currency option transaction charges because once the cap is reached, no additional option

transaction charges would be assessed on these types of transactions, which should, in turn, promote this type of business at the Exchange.⁶

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(2)⁸ thereunder. 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.⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Phlx-2007-61 on the subject line.

⁶ Similarly, the Exchange does not charge customer option comparison charges on customer executions pursuant to the Exchange's Summary of Equity Option and RUT and RMN Charges.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 19b-4(f)(2).

³ See Securities Exchange Act Release Nos. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR-Phlx-2006-34) and 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007) (SR-Phlx-2007-34).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on August 30, 2007, the date on which the Exchange filed Amendment No. 1.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-61 and should be submitted on or before October 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-17959 Filed 9-11-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56361; File No. SR-Phlx-2007-66]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Deletion of the NMS Linkage Fee

September 6, 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 August 30, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to eliminate from the XLE Fee Schedule: (1) the execution fee for incoming NMS Linkage Orders; and (2) another reference to NMS Linkage Orders that appears in a footnote. The text of the proposed rule change is available on the Exchange's Web site at <http://www.Phlx.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to delete a fee that is no longer applicable due to the termination of the

NMS Linkage Plan ("Plan").³ The Plan was utilized by certain exchanges, including Phlx, for the purpose of routing and receiving orders in NMS Stocks. The Plan ended by its own terms on June 30, 2007.⁴ Phlx had imposed a fee on incoming NMS Linkage Orders of \$0.003 per share executed on XLE. Since the end of the Plan, this fee is no longer applicable and Phlx proposes deleting it from the XLE Fee Schedule. In addition, Phlx proposes deleting a reference to "liquidity provided by NMS Linkage Orders" in footnote 2 of the XLE Fee Schedule. With the termination of the Plan, there will be no more orders sent to Phlx over NMS Linkage and therefore no liquidity provided by NMS Linkage Orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and paragraph (f)(2) of Rule 19b-4⁸ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

³ See Securities Exchange Act No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006).

⁴ See *id.*

⁵ 5 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 17 CFR 200.30-3(a)(12).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-66 and should be submitted on or before October 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-17960 Filed 9-11-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56369; File No. SR-Phlx-2007-56]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Definition of Common Stock

September 6, 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 August 2, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On August 30, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Phlx Rule 800 providing for a definition of the term "common stock," as used in Phlx Rules 800-899. In those rules, the term "common stock" will include any security of an issuer designated as common stock and any security of an issuer, however designated, which by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote). This definition is substantially similar to NYSEArca Equities Rule 5.1(b)(12). The text of the proposed rule change is available on the Exchange's Web site at http://www.Phlx.com/exchange/phlx_rule_fil.html, at the Exchange, and at the Commission's Public Reference Room.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt Phlx Rule 800 providing for a definition of the term common stock as used in Phlx Rules 800-899.³ The term common stock is typically used to refer to a security issued by corporations in the United States, whose holders have a residual right to the corporation. However, at times, another name may be given to this security or this type of security may not be issued by a corporation.⁴ Phlx believes that the proposed definition reflects the fact that the term common stock is not always given to a security that has the characteristics of a common stock or that the issuer of this type of security is not always a corporation.

By adopting this new, expanded definition of common stock, Phlx would be permitted to list and trade, pursuant to unlisted trading privileges ("UTP"), securities of issuers that have the characteristics of common stock, even though the security is not designated as common stock. Phlx is permitted to trade certain securities that are not listed on Phlx pursuant to provisions of the Act, the rules thereunder, and Phlx Rules. Section 12(f)(1)(A)(i) of the Act states that "any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to any security that is listed and registered on a national

³ The proposed definition in Phlx Rule 800(a) is identical to the definition of common stock in Phlx Rule 812(d)(2), which, by its terms, is limited to Phlx Rule 812. The definition in proposed Phlx Rule 800(a) would be applicable to Phlx Rules 800-899.

⁴ For example, the Blackstone Group, L.P., a limited partnership, recently listed their common units representing limited partner interests on the New York Stock Exchange ("NYSE"). However, the NYSE Web site page on Blackstone Group, L.P., <http://www.nyse.com/about/listed/bx.html>, describes the security as common stock.

securities exchange * * * ”⁵ Rule 12f-5 under the Act states that “[a] national securities exchange shall not extend unlisted trading privileges to any security unless the national securities exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.”⁶

Generally, Phlx Rule 801 permits the Exchange to trade securities pursuant to UTP.⁷ In addition, Phlx Rules 160–189 describe the operation of Phlx’s electronic equity trading system, XLE, for transactions in, among other things, common stock and the responsibilities of XLE Participants⁸ using XLE.

Phlx has listing standards for common stock.⁹ The listing standards set forth minimum quantitative requirements for both the issuer¹⁰ and the security,¹¹ and standards for the security’s voting rights.¹² However, Phlx’s current listing standards for common stock would not apply to certain securities covered by the expanded definition of common stock proposed herein. With the adoption of the proposed expanded definition of common stock, the current listing standards for common stock in Rule 803(a) would apply to such securities and accordingly, as described

above, such securities would be eligible for trading pursuant to UTP. Further, Phlx would apply the same quantitative criteria in Phlx Rule 803(a) to an issuer, and its security designated as common stock, applying to list under this expanded definition of common stock as it would to a corporation listing its common stock.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing an additional venue for the listing and trading, pursuant to UTP, of common stock to which the proposed definition would apply.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed definition of common stock is identical to NYSEArca Equities Rule 5.1(b)(12) and raises no new regulatory issues. Moreover, waiving the operative delay will allow the Exchange, pursuant to its current listing standards and UTP, to immediately list and trade securities that now fall within this new definition of common stock, providing an additional venue for such securities. For these reasons, the Commission designates that the proposed rule change become operative immediately.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-56 on the subject line.

as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on August 30, 2007, the date on which the Exchange filed Amendment No. 1.

⁵ 15 U.S.C. 781(f)(1)(A)(i).

⁶ 17 CFR 240.12f-5.

⁷ Phlx Rule 801 states “[o]nly such securities as shall have been approved by the Exchange for listing or admission pursuant to unlisted trading privileges shall be dealt in on the Exchange.”

⁸ XLE Participants are Phlx members, Phlx member organizations, their Sponsored Participants (non-members who are sponsored by Phlx member organizations) and individuals authorized by Phlx member organizations or Sponsored Participants to enter orders on XLE. See Phlx Rule 1(n).

⁹ See Phlx Rule 803(a).

¹⁰ Phlx Rule 803(a)(1)–(2) provides:

“The listing criteria for Tier I Issues are as follows:

(a) In the case of Common Stock:

(1) Net Tangible Assets—Total assets (including the value of patents, copyrights and trademarks but excluding the value of goodwill) less total liabilities of at least \$4,000,000.

(2) Earnings—Pretax income of \$750,000 and net income of at least \$400,000 in its last fiscal year.”

¹¹ Phlx Rule 803(a)(3)–(4) provides:

“The listing criteria for Tier I Issues are as follows:

(a) In the case of Common Stock:

* * * * *

(3) Public Distribution—at least 500,000 publicly held shares and at least 800 public shareholders if the issuer has between 500,000 and 1 million shares publicly held, or at least 400 public shareholders if the issuer has either (i) over 1 million shares publicly held or (ii) over 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for a six month period preceding the date of application.

(4) Stock Price/Market Value of Shares Publicly Held—\$5 per share on each of the five business days prior to the application date and \$3,000,000 aggregate market value.”

¹² See Phlx Rules 803(a)(5) and 812.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-56 and should be submitted on or before October 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-17961 Filed 9-11-07; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 5907]

**Shipping Coordinating Committee;
Notice of Meeting**

The Subcommittee on Stability, Load Lines and Fishing Vessel Safety of the Shipping Coordinating Committee will conduct an open meeting at 1 p.m. on Thursday, September 27, 2007, in Room 6319 of the United States Coast Guard Headquarters Building, 2100 2nd Street,

SW., Washington, DC, 20593-0001. The primary purpose of the meeting is to begin preparations for the 51st Session of the International Maritime Organization (IMO) Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety to be held at IMO Headquarters in London, England from July 14th to July 18th, 2008.

The primary matters to be considered include:

- Development of explanatory notes for harmonized International Convention for the Safety of Life at Sea (SOLAS) Chapter II-1;
- Revision of the Intact Stability Code;
- Safety of small fishing vessels;
- Development of options to improve effect on ship design and safety of the International Convention on Tonnage Measurement of Ships, 1969 (TM Convention);
- Review of guidelines for uniform operating limitations on high-speed craft, prepared by the Sub-Committee on Ship Design and Equipment (DE);
- Time-dependent survivability of passenger ships in damaged condition;
- Guidance on the impact of open watertight doors on existing and new ship survivability;
- Stability and seakeeping characteristics of damaged passenger ships in a seaway when returning to port by own power or under tow;
- Damage stability verification of tank vessels.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Paul Cojeen, Commandant (CG-3PSE), U.S. Coast Guard Headquarters, 2100 2nd St. SW., Room 1308, Washington, DC 20593-0001 or by calling (202) 372-1372.

Dated: September 6, 2007.

Mark W. Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E7-17981 Filed 9-11-07; 8:45 am]

BILLING CODE 4710-09-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Public Notice for Waiver of
Aeronautical Land-Use Assurance;
Outagamie County Airport; Appleton,
WI**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of a portion of the airport property. The Wisconsin Department of Transportation is widening State HWY 96 on the north edge of the airport. They need a total of 3.35 acres in narrow strip of land for the road widening and HWY right of way. The airport will benefit with better access to the airport, improved drainage, burying an overhead power line and new fencing. The Federal Highway Administration issued a Finding of No Significant Impact on September 30, 2002. The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan.

The acreage comprising this parcel was originally acquired under Grant No. FAAP 601 in 1966, FAAP C903 in 1968 and ADAP 01 in 1972. The County of Outagamie (Wisconsin), as airport owner, has concluded that the subject airport land is not needed for expansion of airport facilities. There are no impacts to the airport by allowing the airport to dispose of the property. The airport will receive the appraised fair market value of the land. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before October 12, 2007.

ADDRESSES: Ms. Sandra E. DePottay, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450-2706. Telephone Number (612) 713-4350/Fax Number (612) 713-4564. Documents reflecting this FAA action may be reviewed at this same location or at the Outagamie County Airport, Challenger Dr., Appleton WI 54153.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottay, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450-2706. Telephone Number

²¹ 17 CFR 200.30-3(a)(12).

(612) 713-4350/FAX Number (612) 713-4364. Documents reflecting this FAA action may be reviewed at this same location or at the Outagamie County Airport, Challenger Dr., Appleton WI 54153.

SUPPLEMENTARY INFORMATION: Following is a legal description of the subject airport property to be released at Outagamie County Airport in Appleton, Wisconsin and described as follows:

A parcel of land located in Northeast ¼ of the Northeast ¼ of Section 26, T21N, R16E and North ½ of Northwest ¼ of Section 25, T21N, R16E, Town of Greenville, Outagamie County WI.

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Minneapolis, MN on August 23, 2007.

Robert A. Huber,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 07-4477 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 2) notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

AGENCY: Federal Aviation Administration.

ACTION: Notice of Meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: October 3, 2007—9 a.m. to 5 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue, SW., Round Room (10th Floor), Washington, DC 20591.

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. The Weather Working Group will also present a report for approval. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267-8937 or gloria.dunderman@faa.gov. Attendees will have to present picture ID at the security desk and escorted to the Round Room.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on September 6, 2007.

Paul Krois,

Group Manager, Planning and Coordination Group.

[FR Doc. 07-4476 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting: RTCA Special Committee 206/EUROCAE WG 76 Plenary

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information Services Data Link.

DATES: The meeting will be held October 8-12, 2007 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Boeing Longacres Park Building 25-01, SW., 16th Street, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036-5133; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>; (2) Hosted by Boeing; Onsite Contact: Bob Smith; telephone (425) 266-8186; fax (425) 294-1944.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 206 meeting/EUROCAE WG 76. The agenda will include:

- *October 8:*
 - Opening Session (Chairman's Remarks and Introductions, Review and Approve Meeting Agenda and Minutes, Discussion, Action Item Review).
 - Resolve Final Review and Comment (FRAC) comments on draft document—*Operational Services and Environment Definition (OSED) Aeronautical Information Services (AIS) and Meteorological (MET) Data Link Services*, called OSED.
 - *October 9:*
 - Continue FRAC comment resolution on OSED.
 - *October 10:*
 - Continue FRAC comment resolution on OSED.

- *October 11:*
 - Continue FRAC comment resolution on OSED.
 - *October 12:*
 - Commence work on SPR and INTEROP documents.
 - Plenary Session.
 - Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 31, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07-4475 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration, Department of Transportation

ACTION: Revised Notice of Intent

SUMMARY: This notice is a revision of the August 31, 2007 Notice of Intent (**Federal Register** Volume 72, Number 169, Pages 50441-50442) which advised that an Environmental Impact Statement (EIS) will be prepared for a project in Los Angeles, California. The purpose of this revised notice is to advise agencies and the public that environmental review, consultation, and any other action required in accordance with applicable Federal laws for this project is being, or has been, carried out by the California Department of Transportation (Caltrans) under its assumption of responsibility, pursuant to 23 U.S.C. 327.

FOR FURTHER INFORMATION CONTACT: Ron Kosinski, Deputy Director, Division of Environmental Planning, California Department of Transportation, District 7, 100 S. Main Street, Los Angeles, CA 90012, Tel. (213) 897-0703.

SUPPLEMENTARY INFORMATION: Caltrans is issuing this notice to advise the public that an EIS will be prepared on a proposal to seismically improve the 6th Street Viaduct in the City and County of

Los Angeles, CA. Proposed improvements would involve retrofitting or demolition and replacement of the existing viaduct over the Los Angeles River between Mateo and Mill Streets on the west side and west of Interstate 5 on the east side, for a distance of approximately 0.9 miles.

The 6th Street Viaduct, built in 1932, is one of 12 historic bridges/viaducts crossing the Los Angeles River. The concrete elements of the 3,500 foot long 6th Street Viaduct are degraded by an ongoing chemical reaction, known as Alkali Silica Reaction (ASR), which has led to substantial deterioration of the structure and decrease of its concrete strength, rendering it vulnerable to collapse in a major earthquake. This ASR deterioration of the 6th Street Viaduct has been occurring for at least 75 years, despite ongoing efforts to arrest or limit its effect. While the deteriorated surface appearance of the viaduct is of concern, its underlying structural integrity is of much greater concern. In 1989, the Whittier Narrows earthquake caused damage to shear keys and caused a column crack at Bent 33 of the viaduct. The structure has since been classified by Caltrans as Category I and placed on the mandatory seismic retrofit list.

The proposed project would result in a structure capable of withstanding a moderate seismic event by either retrofitting the existing structure or replacing it entirely. Several alternatives were considered during the project development phase. Criteria used to identify alternatives to be carried forward for detailed analysis in the environmental document include construction and maintenance costs, life span of the facility, constructability, historic preservation, community disruption, and seismic and operational safety. Based on the results of public pre-scoping meetings and preliminary screening analysis, a No Build Alternative and two Build Alternatives, including Viaduct Retrofit and Viaduct Replacement, will be analyzed in the environmental document.

The project team has met with the general public and neighborhood groups, and a Community Advisory Committee has been actively engaged. Public information activities, including meetings with the project development team, will continue throughout the design and environmental process. A subsequent public hearing on the draft EIS will be held to discuss alternatives and impacts of the proposed action. Public notices will be published and posted on the project Web site containing the specific time and place of the public scoping meetings and

hearing. To ensure that the full range of issues related to this proposed action is addressed and all significant concerns are identified, comments and suggestions are invited from all interested parties. Comments or questions about this proposed action and the EIS should be directed to Caltrans at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 5, 2007.

Maiser Khaled,

Director, Project Development & Environment, Federal Highway Administration, Sacramento, California.

[FR Doc. E7-17970 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: I-805 Managed Lanes South

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: This notice is a revision of the July 11, 2007 Notice of Intent (**Federal Register** Volume 72, Number 132, Page 37814) which advised that an Environmental Impact Statement (EIS) will be prepared for a project in San Diego, California. The purpose of this revised notice is to advise agencies and the public that environmental review, consultation, and any other action required in accordance with applicable Federal laws for this project is being, or has been, carried out by the California Department of Transportation (Caltrans) under its assumption of responsibility, pursuant to 23 U.S.C. 327.

FOR FURTHER INFORMATION CONTACT:

David Nagy, Senior Environmental Planner, California Department of Transportation, 4050 Taylor Street, San Diego, CA 92110, Telephone: (619) 688-0224.

SUPPLEMENTARY INFORMATION: The FHWA is issuing this notice to advise the public that an EIS will be prepared for proposed improvements on Interstate 805 (I-805) in San Diego, CA. Proposed improvements include construction of managed lanes, direct access ramps, in-line transit stations, and auxiliary lanes between Palomar Street and University Avenue. These proposed improvements are necessary

to convey existing and projected traffic demand. Alternatives under consideration include (1) taking no action; (2) constructing two managed lanes from Palomar Street to State Route 94; and (3) constructing four managed lanes from Palomar Street to State Route 94. Incorporated into and studied with the build alternatives will be design variations for locations of direct access ramps, auxiliary lanes, and in-line transit stations. 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 for the project, and a separate mailing will be sent out to all interested parties with the specific date, time, and location for the meeting. In addition, a public hearing will be held during draft EIS circulation. Public notice will be given as to the time and place of the hearing. The draft EIS will be available for public and agency review and comment 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 EIS should be directed to the contacts provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 4, 2007.

Maiser Khaled,

Director, Project Development & Environment, Federal Highway Administration, Sacramento, California.

[FR Doc. E7-17912 Filed 9-11-07; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35076]

City of Boise Railroad—Operation Exemption—The Boise Cutoff Rail Line in Ada County, ID

The City of Boise Railroad (the City), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate an 18.2-mile line of railroad known as the Boise Cutoff between milepost 424.80 near Orchard and

milepost 443.0 near Hillcrest, in Ada County, ID.¹

The City certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed \$5 million. The transaction is scheduled to be consummated on or after September 26, 2007.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than September 19, 2007.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35076, must be filed with the Surface Transportation Board, 395 E. Street, SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: August 31, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. E7-17730 Filed 9-11-07; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Statement on Sound Practices Concerning Complex Structured Finance Activities

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort

¹ The Boise Cutoff was formerly part of the Boise Subdivision of Union Pacific Railroad Company (UP). See, *Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Ada County, ID*, STB Docket No. AB-33 (Sub-No. 137X) (STB served July 8, 1999). The City states that after abandonment, UP conveyed the Boise Cutoff to the City in 2000. The City did not believe at that time that it required Board authority or an exemption for its operation of the Boise Cutoff. The City now proposes to actively operate the Boise Cutoff.

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The OTS within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before November 13, 2007.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906-6518; or send an e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Debbie Merkle, Project Manager, (202) 906-5688, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

- Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;
- The accuracy of OTS's estimate of the burden of the proposed information collection;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the information collection on respondents,

including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Statement on Sound Practices Concerning Complex Structured Finance Activities.

OMB Number: 1550-0111.

Form Number: N/A.

Description: The Statement on Sound Practices Concerning Complex Structured Finance Activities describes the types of internal controls and risk management procedures that the OTS believes are particularly effective in assisting financial institutions to identify and address the reputational, legal and other risks associated with complex structured finance transactions.

Type of Review: Extension without change to a currently approved collection.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 5.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 25 hours.

Estimated Total Burden: 125 hours.

Clearance Officer: Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: September 7, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E7-18030 Filed 9-11-07; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0619]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 12, 2007.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-7316. Please refer to "OMB Control No. 2900-0619" in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-8374, FAX (202) 565-7870 or e-mail: denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0619."

SUPPLEMENTARY INFORMATION:

Title: Inquiry Routing and Information System (IRIS).

OMB Control Number: 2900-0619.

Type of Review: Extension of a currently approved collection.

Abstract: The World Wide Web is a powerful media for the delivery of information and services to veterans, dependents, and active duty personnel worldwide. IRIS allows a customer to submit questions, complaints, compliments, and suggestions directly to the appropriate office at any time and receive an answer more quickly than through standard mail. IRIS does not provide applications to veterans or serve as a conduit for patient data, etc.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 27, 2007, at pages 35302-35303.

Affected Public: Individuals or Households.

Estimated Annual Burden: 26,000 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 13,000.

Dated: August 30, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7-17952 Filed 9-11-07; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0144]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 12, 2007.

ADDRESSES: Submit written comments on the collection of information through <http://www.Regulations.gov>; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0144" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-8374, fax (202) 565-7870 or e-mail denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0144" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: HUD/VA Addendum to Uniform Residential Loan Application, VA Form 26-1802a, and Freddie Mac 65/Fannie Mae Form 1003, Uniform Residential Loan Application.

OMB Control Number: 2900-0144.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26-1802a serves as a joint loan application for both VA and the Department of Housing and Urban Development (HUD). Lenders and veterans use the form to apply for guaranty of home loans.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 27, 2007, at page 35304.

Affected Public: Individuals or households, and Business or other for-profit.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 200,000.

Dated: August 30, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7-17953 Filed 9-11-07; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0655]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine Filipino veterans or beneficiaries receiving benefit at the full-dollar rate based on U.S. residency requirements.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2007.

ADDRESSES: Submit written comments on the collection of information through <http://www.Regulations.gov> or to Nancy

J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0655" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 461-9769 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Residency Verification Report—Veterans and Survivors, VA Form Letter 21-914.

OMB Control Number: 2900-0655.

Type of Review: Extension of a previously approved collection.

Abstract: VA Form Letter 21-914 is use to verify whether Filipino veterans of the Special Philippine Scouts, Commonwealth Army of the Philippines, organized guerilla groups, or survivors receiving service-connected compensation benefits at the full-dollar if they reside in the United States as United States citizens or as aliens lawfully admitted for permanent residence continues to meet the residency requirements.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per

Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,250.

Dated: August 30, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7-17954 Filed 9-11-07; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0568]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed from accredited and nonaccredited educational institutions.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2007.

ADDRESSES: Submit written comments on the collection of information through <http://www.Regulations.gov> or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-2900-0455" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 461-9769 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Submission of School Catalog to the State Approving Agency.

OMB Control Number: 2900-0568.

Type of Review: Extension of a previously approved collection.

Abstract: Accredited and nonaccredited educational institutions, with the exceptions of elementary and secondary schools, must submit copies of their catalog to State approving agency when applying for approval of a new course. State approval agencies use the catalog to determine what courses can be approved for VA training. VA pays educational assistance to veterans, persons on active duty or reservists, and eligible persons pursuing an approved program of education. Educational assistance is not payable when claimants pursue unapproved courses.

Affected Public: Not-for-profit institutions, Business or other for-profit.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 8,000.

Dated: August 30, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7-17955 Filed 9-11-07; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0500]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's continued entitlement to benefits based on the number of dependents.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2007.

ADDRESSES: Submit written comments on the collection of information through <http://www.Regulations.gov> or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0500" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461-9769 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Status of Dependents Questionnaire, VA Form 21-0538.

OMB Control Number: 2900-0500.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans receiving compensation for service-connected disability which includes an additional amount for their spouse and/or child(ren) complete VA Form 21-0538 to certify the status of these dependents for whom additional compensation is being paid.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,083 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Once every eight years.

Estimated Number of Respondents: 84,500.

Dated: August 30, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7-17956 Filed 9-11-07; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2600-0260]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the need to obtain written consent to disclose medical treatment information to individuals or third parties.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2007.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: mary.stout@va.gov. Please refer to "OMB Control No. 2900-0260" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 273-8664 or Fax (202) 273-9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Request for and Authorization to Release Medical Records or Health Information, VA Form 10-5345.

b. Individual's Request for a Copy of their Own Health Information, VA Form 10-5345a.

OMB Control Number: 2600-0260.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10-5345 is used to obtain a written consent from patients before information concerning his or her treatment for alcoholism or alcohol abuse, drug abuse, sickle cell anemia, or infection with the human immunodeficiency virus (HIV) can be disclosed to private insurance companies, physicians and other third parties.

b. Patients complete VA Form 10-5345 to request a copy of their medical records from the Department of Veterans Affairs.

Affected Public: Business or other for profit, Individuals or households, and Not for profit institutions.

Estimated Total Annual Burden:

- a. VA Form 10-5345—16,667 hours.
- b. VA Form 10-5345a—16,667 hours.

Estimated Average Burden per

Respondent:

- a. VA Form 10-5345—2 minutes.
- b. VA Form 10-5345a—2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

- a. VA Form 10-5345—29,667.
- b. VA Form 10-5345a—29,667.

Dated: August 30, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7-17957 Filed 9-11-07; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Cemeteries and Memorials will be held on October 31-November 1, 2007 in Room 819 at the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC. On October 31, 2007, the meeting will begin at 8 a.m. and conclude at 3:45 p.m. and on November 1, 2007, the meeting will begin at 8:30 a.m. and conclude at 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites,

the erection of appropriate memorials, and the adequacy of Federal burial benefits.

On October 31, 2007, the Committee will receive updates on National Cemetery Administration issues. On November 1, 2007, the Committee will tour Quantico National Cemetery, in Triangle, Virginia, and then reconvene at the Lafayette Building for a business session in the afternoon, which will include discussions of Committee recommendations, future meeting sites, and potential agenda topics.

Time will not be allocated for receiving oral presentations from the public. Any member of the public wishing to attend the meeting should contact Mr. Michael Nacincik, Designated Federal Officer, at (202) 273-5221. The Committee will accept written comments. Comments may be transmitted electronically to the Committee at *Michael.n@va.gov* or mailed to the National Cemetery Administration (41C2), 810 Vermont Avenue, NW., Washington, DC 20420. In the public's communications with the Committee, the writers must identify themselves and the organizations, associations, or persons they represent.

Dated: September 6, 2007.

By Direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 07-4461 Filed 9-11-07; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-

463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on October 15, 2007 in Room 230 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The meeting will convene at 8 a.m. and adjourn at 5:30 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of veterans and to enhance development of tests and treatments for diseases particularly relevant to veterans.

The Committee will receive program updates and updates from the workgroups on Ethics and Colon Cancer testing, and will be asked to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of veterans.

Members of the public may provide up to five minute statements during the period reserved for public comments. They may also submit, at the time of the meeting, a 1-2 page summary of their comments for inclusion in the official meeting record. Any member of the public seeking additional information should contact Dr. Sumitra Muralidhar at *sumitra.muralidhar@va.gov*.

Dated: September 6, 2007.

By direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 07-4460 Filed 9-11-07; 8:45 am]

BILLING CODE 8320-01-M

Corrections

Federal Register

Vol. 72, No. 176

Wednesday, September 12, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-RCRA-2006-0796; FRL-8462-2]

RIN 2050-AE81

Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments

Correction

In notice document E7-17138 beginning on page 49714 in the issue of

Wednesday, August 29, 2007, make the following corrections:

1. On page 49718, in the first column, in the fourth full paragraph, in the seventh line, “ $5 \times 10^{\text{minus};4\le}$ ” should read “ 5×10^{-4} ”.

2. On the same page, in the same column, in the same paragraph, in the eighth line, “ $2 \times 10^{\text{minus};4}$ ” should read “ 2×10^{-4} ”.

[FR Doc. Z7-17138 Filed 9-11-07; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Correction

In notice document 07-4119 beginning on page 48301 in the issue of Thursday, August 23, 2007, make the following correction:

On page 48301, in the third column, in the first full paragraph, in the ninth line, “*pubcomment-ess.enrd@usdoj.gov*” should read “*pubcomment-ees.enrd@usdoj.gov*”.

[FR Doc. C7-4119 Filed 9-11-07; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

Wednesday,
September 12, 2007

Part II

Environmental Protection Agency

40 CFR Parts 51, 52, 70, and 71
Operating Permit Programs and
Prevention of Significant Deterioration
(PSD) and Nonattainment New Source
Review (NSR); Flexible Air Permitting
Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 70, and 71

[EPA-HQ-OAR-2004-0087, FRL-8462-9]

RIN 2060-AM45

Operating Permit Programs and Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Flexible Air Permitting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations governing State and Federal operating permit programs required by title V of the Clean Air Act (CAA or the Act) and the New Source Review (NSR) programs required by parts C and D of title I of the Act. These proposed actions are based, in large part, on the lessons learned through EPA's pilot experience in which EPA worked closely with States and certain sources subject to title V permitting requirements to develop flexible air permitting approaches that provide greater operational flexibility and, at the same time, ensure environmental protection and compliance with applicable laws.

In pilot permits, increased flexibility is primarily achieved through advance approvals under NSR and alternative operating scenarios (AOSs). The proposed revisions clarify how this can often be done in the existing regulatory framework of the operating permit programs. The proposed revisions also add major NSR requirements for Green Groups, which allow future changes to occur within a group of emissions activities, provided that they are ducted to a common air pollution control device which is determined to meet "best available control technology" (BACT) or "lowest achievable emission rate" (LAER), as applicable and that they are determined to comply with all relevant ambient requirements.

DATES: *Comments.* Written comments must be received on or before November 13, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before October 12, 2007.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 2, 2007, we will hold a public hearing approximately 30 days after publication in the **Federal Register**. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2004-0087, by one of the following methods:

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

- *E-mail:* a-and-r-Docket@epa.gov.
- *Fax:* (202) 566-9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- *Hand Delivery:* EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, Room 3334, 1301 Constitution Ave., 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.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0087. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions

on submitting comments, go to I C & D of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the index at www.regulations.gov. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center (Air Docket), EPA West, 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: For issues concerning advance approvals and AOSs, contact Michael Trutna, Air Quality Policy Division (C504-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541-5345, fax number (919) 541-4028; or electronic mail at trutna.mike@epa.gov.

For issues concerning ARMs and EPA's pilot permits, contact David Beck, Office of Policy, Economics, and Innovation, Innovative Pilots Division (C304-05), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541-5421, fax number (919) 541-2664; or electronic mail at beck.david@epa.gov.

For issues relating to monitoring, recordkeeping, and reporting for flexible air permits, contact Barrett Parker, Sector Policies and Programs Division, Measurement Policy Group (D243-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone 919-541-5635, fax number (919) 541-1039; or electronic mail at parker.barrett@epa.gov.

For other part 70 issues, contact Juan Santiago, Operating Permits Group, Air Quality Policy Division (C504-05), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541-1084, fax number (919) 541-5509; or electronic mail at santiago.juan@epa.gov.

For issues relating to Green Groups, contact Dave Painter, New Source Review Group, Air Quality Policy Division (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541-

5515, fax number (919) 541-5509; or electronic mail at painter.david@epa.gov.

To request a hearing or information pertaining to a hearing on this document, please contact Pam Long, Air Quality Policy Division, U.S. EPA, Office of Air Quality Planning and Standards (C504-03), Research Triangle Park, North Carolina 27711, telephone number (919) 541-0641, facsimile number (919) 541-5509; electronic mail e-mail address: long.pam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What are the regulated entities?

Entities potentially affected by these proposed actions are facilities currently required to obtain title V permits under State, local, tribal, or Federal operating permits programs, and State, local, and tribal governments that are authorized by EPA to issue such operating permits. Other entities potentially affected by this proposed action are facilities

required to obtain major NSR permits under State, local, tribal, or Federal major NSR programs, and State, local, and tribal governments that issue such permits pursuant to approved part 51 major NSR programs. Potentially affected sources are found in a wide variety of industry groups. In particular, we believe based on our experience in implementing our flexible air permit pilot program that these groups will include, but are not limited to, the following:

Industry group	SIC ^a	NAICS ^b
Aerospace Manufacturing	372	336411, 336412, 332912, 336411, 335413.
Automobile Manufacturing	371	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213.
Industrial Organic Chemicals	286	325191, 325111, 325132, 325192, 225188, 325193, 32512, 325199.
Chemical Processes	281	325181, 325182, 325188, 32512, 325131, 325998, 331311.
Converted Paper and Paperboard Products.	267	322221, 322222, 322223, 322224, 322226, 322231, 326111, 326112, 322299, 322291, 322232, 322233, 322211.
Magnetic Tape Manufacturing	369	334613.
Petroleum Refining	291	32411.
Other Coating Operations	226, 229, 251, 252, 253, 254, 267, 358, 363.	313311, 313312, 314992, 33132, 337122, 337121, 337124, 337215, 337129, 37125, 337211, 337214, 337127, 322221, 322222, 322226, 335221, 335222, 335224, 335228, 333312, 333415, 333319.
Paper Mills	262	322121, 322122.
Pharmaceutical Manufacturing	283	325411, 325412, 325413, 325414.
Printing and Publishing	275	323114, 323110, 323111, 323113, 323112, 323115, 323119.
Pulp and Paper Mills	262	32211, 322121, 322122, 32213.
Semi-conductors	367	334413.
Specialty Chemical Batch Processes.	282, 283, 284, 285, 286, 287, 289, 386.	3251, 3252, 3253, 3254, 3255, 3256, 3259, except 325131 and 325181.

^aStandard Industrial Classification

^bNorth American Industry Classification System.

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. Suggestions for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying

information (subject heading, **Federal Register** date and page number).

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

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

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

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

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

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

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

C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the WWW. Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr>.

D. How Can I Find Information About a Possible Hearing?

Persons interested in presenting oral testimony should contact Pam Long, Air Quality Policy Division (C504-03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-0641 or e-mail long.pam@epa.gov at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Pam Long to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed rules.

E. How is this preamble organized?

The information presented in this preamble is organized as follows:

I. General Information

- A. What are the regulated entities?
 - B. What should I consider as I prepare my comments for EPA?
 - C. Where can I get a copy of this document and other related information?
 - D. How can I find information about a possible hearing?
 - E. How is this preamble organized?
- #### II. What is a flexible air permit and the background related to this action?
- A. What is a flexible air permit?
 - B. What is the statutory background?
 - C. What is the regulatory background relating to the proposed revisions to parts 70 and 71?
 - D. What is the regulatory background relating to the proposed revisions to parts 51 and 52?
- #### III. What is the purpose of this action?
- #### IV. What experience did we gain from our 12-year pilot permit experience?
- A. What were the benefits of the pilot permits?
 - B. What were the conclusions of the sources, permitting authorities, and EPA about flexible permits?
 - C. What are EPA's recommendations for public participation in flexible permitting?
- #### V. What are the key elements of this proposal?
- A. What are the key elements of proposed revisions to parts 70 and 71?
 - B. What are the key elements of proposed revisions to parts 51 and 52?
- #### VI. What changes are we proposing to parts 70 and 71?
- A. What is our proposed definition of an AOS, and how does it provide a source operational flexibility?
 - B. What information is necessary in a title V permit application to seek approval of an AOS?
 - C. What terms and conditions must be included in the title V permit for approved AOSs?
 - D. What are some examples of how AOSs and advance approvals can be used to provide operational flexibility?
 - E. What is the process for adding or revising advance approvals, AOSs, and ARMs in issued permits?
 - F. How do the proposed AOS provisions differ between parts 70 and 71?
- #### VII. What changes are we proposing in parts 51 and 52?
- A. What are the benefits of Green Groups?
 - B. What is a Green Group?
 - C. How is a Green Group designation incorporated into a title V permit?
 - D. What is the legal rationale for Green Groups?
 - E. What are the conforming regulatory changes we must make to implement the Green Group concept?
 - F. What is an example of how a Green Group might be used in combination with a title V permit?
- #### VIII. What is the effect of these proposed revisions?

A. If these proposed revisions are finalized, what are the implications for approved part 70 programs?

B. What are the implications for NSR programs?

IX. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act

II. What is a flexible air permit and the background related to this action?

In this section, we first explain what is a flexible air permit. We then provide an overview of the relevant statutory provisions and describe the regulatory and other actions taken over the course of the last decade that are relevant to this proposal.

A. What is a flexible air permit?

A flexible air permit is a title V permit that facilitates flexible, market-responsive operations at a source through the use of one or more permitting approaches, while ensuring equal or greater environmental protection as achieved by conventional permits.¹ In particular, flexible permitting approaches allow the source, under protection of the permit shield, to make certain types of physical and operational changes without further review or approval by the permitting authority. One approach includes, for example, obtaining advance approval for anticipated changes (such as through a minor NSR action), incorporating the advance approval into the title V permit, and adding terms in the title V permit as necessary to assure compliance with all other applicable requirements implicated by the anticipated changes. Another approach is to establish one or more alternative operating scenarios (AOSs) in a title V permit to allow existing emissions units the flexibility to operate in varying ways and/or at varying rates of production, where such variations would be subject to different applicable requirements but would not require prior authorization (i.e., advance approval).

¹ We first addressed the concept of a flexible air permit in May 1991. See 56 FR 21712, 21748 (May 10, 1991).

For more than a decade, we participated in a pilot flexible air permitting program with certain title V sources and permitting authorities through which we tested and evaluated various permitting approaches that afford operational flexibility. The lessons learned through the pilot program, in part, served as the basis for our adoption of the plantwide applicability limitation (PAL) provisions of the 2002 NSR Improvement rule. They also serve as a basis for this rule, where we seek to build upon existing regulatory provisions that afford operational flexibility. We believe that the flexible permitting approaches in this proposed rulemaking provide a path forward for sources to more effectively and proactively manage their title V and NSR permitting obligations, while ensuring environmental protection.

B. What is the statutory background?

There are two aspects of the CAA that are relevant to this proposed rule: title V and parts C and D of title I of the Act. In 1990, Congress promulgated title V and established the operating permit program. That program requires certain stationary sources to obtain operating permits as a mechanism for gathering all applicable requirements of the Act for each affected source into one comprehensive document.² See H.R. Conference Report No. 101-952, reprinted in U.S.C.C.A.N. 3867, 3877 (1990).

One of the key purposes of the title V operating permit program is to enable the source, the State or local permitting authority, EPA, and the public to gain a better understanding of the requirements of the Act to which the source is subject. The ability to assess and achieve compliance with the law is improved by virtue of having one comprehensive operating permit containing all applicable requirements for a source. The title V permit program does not impose new substantive air quality control requirements. It does, however, require that fees be imposed on sources and that certain procedural measures be followed, especially with respect to determining compliance with applicable requirements. See, e.g., CAA sections 502(b)(3), 503(b)(2), and 504(a).

² "Applicable requirements" is a term that is used in title V. The EPA has defined the term to include, among other things, State implementation plan (SIP) rules, the terms and conditions of preconstruction permits issued under a SIP-approved NSR program, and requirements pursuant to the new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), and Acid Rain Programs. See 40 CFR 70.2.

The Act affirms that State and local governments have primary responsibility for air quality. See CAA section 101(a)(3). Title V vests primary responsibility for issuing operating permits with State and local governments. See CAA section 502. Congress required EPA to promulgate regulations establishing the minimum elements of a title V operating permits program. See CAA section 502(b) (articulating ten minimum elements for State programs). In establishing such minimum elements, Congress directed that EPA develop “[a]dequate, streamlined, and reasonable procedures” for processing and reviewing permit applications and for the expeditious review of permit actions. See CAA section 502(b)(6).

As explained below, EPA promulgated regulations establishing the minimum requirements for a State operating permit program in 1992. These regulations are codified at 40 CFR part 70 and are often referenced as “part 70.” In addition to requiring EPA to establish the minimum elements for the operating permits program, Congress required each State to develop and submit to EPA for approval an operating permit program that meets the requirements of the Act and part 70. See CAA section 502(d)(1). In areas that do not have an approved State, local, or tribal title V program, EPA administers the operating permit program as a Federal program pursuant to regulations set out in 40 CFR part 71. See CAA section 502(d)(3). Title V requires that each operating permit contain terms sufficient to assure compliance with all applicable air requirements. See CAA section 504(a).

The other parts of the Act relevant to this rule include part C, entitled “Prevention of Significant Deterioration of Air Quality” (typically referred to as “PSD”), and part D, entitled “Plan Requirements for Nonattainment Areas” (typically referred to as “nonattainment major NSR”), of title I of the Act. See CAA sections 160 through 169B (part C) and 171 through 193 (part D). These parts together are commonly referred to as the major NSR program. This program is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Act. The implementing regulations for the program are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

The PSD provisions apply to new major sources and to major modifications at existing major sources for pollutants where the area in which the source is located is in attainment or

unclassifiable with the national ambient air quality standards (NAAQS). A source that is subject to PSD must install BACT and perform an air quality analysis and an additional impacts analysis, and there must be an opportunity for public participation. See CAA section 165(a). The BACT is an emissions limitation that is based on the maximum degree of control that can be achieved, as determined on a case-by-case basis for each source considering energy, environmental, and economic impacts. See CAA section 169(3); 40 CFR 51.166(b)(12), 52.21(b)(12), and 51.165(a)(1)(xl). The source’s air quality analysis must demonstrate that the source will not cause or contribute to a violation of any NAAQS or any maximum allowable increase in ambient concentration either for a Class I area or as established under the PSD program (typically referred to as “PSD increments”). See CAA section 165(a)(3).

Nonattainment major NSR applies to new major sources and to major modifications at existing major sources for pollutants where the area in which the source is located is not in attainment with the NAAQS.³ Nonattainment major NSR requires the source to comply with lowest achievable emission rate (“LAER”) and to obtain sufficient emissions offsets, and there must be an opportunity for public involvement. See CAA section 173(a); 40 CFR 51.161. The LAER is determined for each source to reflect the more stringent of the following: (1) The most stringent emissions limitation that is contained in any State implementation plan (SIP) for that type of source (if achievable for the proposed source), or (2) the most stringent emissions limitation that is achieved in practice for that type of source. See CAA section 171(3); 40 CFR 51.165(a)(1)(xiii).⁴

In addition to a major NSR program, States are required to have “minor” NSR programs, which apply to new and modified sources that do not meet the emissions thresholds for major NSR. See section 110(a)(2)(C) of the Act. The minor NSR program is part of a State’s implementation plan and is designed to ensure that the construction or modification of an affected source does not violate any portion of the SIP and does not interfere with the attainment of

the NAAQS or cause the exceedance of any applicable PSD increments.

C. What is the regulatory background relating to the proposed revisions to parts 70 and 71?

This proposed rule addresses certain permitting mechanisms for providing operational flexibility. The concept of operational flexibility is not a new one. In July 1992, under the authority of title V of the Act, we finalized the part 70 State operating permit program regulations.⁵ See 57 FR 32250 (July 21, 1992); 40 CFR part 70. Those regulations include operational flexibility provisions, one of which is the AOS provision found at 40 CFR 70.6(a)(9). It is this provision that is the primary subject of these proposed revisions.⁶ This section 40 CFR 70.6(a)(9) generally provides that any permit issued under part 70 must include terms and conditions for reasonably anticipated operating scenarios approved by the permitting authority. EPA promulgated 40 CFR 70.6(a)(9) pursuant to the authority of section 502(b)(6) of the CAA, which directs that operating permit programs include “[a]dequate, streamlined, and reasonable procedures” for processing and reviewing permit applications and for the expeditious review of permit actions.

In the final part 70 rule, we emphasized the importance of 40 CFR 70.6(a)(9), noting that a permit that contains approved AOSs “will be a more complete representation of the operation at the permitted facility.” See 57 FR 32276. We also explained that once a flexible air permit with approved AOSs is issued, the need for additional permit modifications will be substantially reduced since the permit will already contain appropriate terms and conditions to accommodate the approved operating scenarios. In the final part 70 rule, we did not place any restrictions on the types of operations that could qualify as a reasonably anticipated operating scenario.⁷

⁵ In the 1990’s, we proposed certain clarifications and modifications to the part 70 regulations, none of which were ever finalized. See generally 60 FR 45529 (Aug. 31, 1995), 59 FR 44460 (Aug. 29, 1994). In those proposals, among other things, we discussed the concept of “advance NSR” in relation to AOSs, and proposed a definition for “alternative operating scenarios.”

⁶ The EPA included other operational flexibility provisions in the final part 70 regulations, including 40 CFR 70.4(b)(12), (b)(14) and (b)(15), which implement section 502(b)(10) of the Act. This proposed rule does not address these provisions.

⁷ The Federal operating permit program at part 71 addresses reasonably anticipated operating scenarios in the same fashion as part 70. See 40 CFR

³ “Major stationary source” is defined at 40 CFR 51.165(a)(1)(iv), 51.166(b)(1), and 52.21(b)(1), and “major modification” is defined at 40 CFR 51.165(a)(1)(v), 51.166(b)(2), and 52.21(b)(2).

⁴ This is a section 307(d) rulemaking. See CAA section 307(d)(1)(J) (addressing regulations under part C of Subchapter I) and 307(d)(1)(V) (authorizing the Administrator to designate any action a 307(d) rulemaking).

Shortly after we finalized the part 70 State operating permit program, we initiated a pilot title V permit program with interested States, and our program continues to the present. See section IV of this preamble for more discussion. Companies participating in the pilot program sought to reduce the cost, time, and delays associated with a permit revision for each operational change at a facility. We and the States sought to increase the sources' operational flexibility, while assuring compliance with applicable requirements, ensuring environmental protection, and facilitating P2. These pilots typically allowed for both changes to operations of existing emissions units and the addition of entirely new emissions units, provided that the changes were sufficiently well described in the permit application so that the permitting authority could confirm that all applicable requirements were identified and that the permit contained terms and conditions assuring compliance with all applicable requirements.⁸

To evaluate the flexible pilot permits program, we conducted a thorough review of six of the pilot permits for which at the time there was significant implementation experience.⁹ We reviewed on-site records to track utilization of the flexible permit provisions, assessed how well the permits worked, evaluated total emissions reductions achieved, and analyzed the economic benefits associated with the permits. Overall, we found that significant environmental benefits had occurred for each of the permits reviewed. At the time of the evaluation, each of the sources had achieved 25- to 80-percent reductions in actual plantwide emissions or emissions

per unit of production. We made a series of findings based on our evaluation of the permits. See "Evaluation of the Implementation Experience with Innovative Air Permits" and section IV of this preamble, which summarizes the findings of this study.¹⁰

D. What is the regulatory background relating to the proposed revisions to parts 51 and 52?

Based on our pilot permit evaluation and our 1996 proposed modifications to the major NSR program, in December 2002, we finalized the NSR Improvement rule. In that rule, we promulgated regulations for PALs in response to comments received on draft White Paper Number 3. As explained in the preamble to the December 2002 final rule, a PAL is an alternative approach for determining NSR applicability on a plantwide basis. Using PALs will allow sources "to respond rapidly to market changes," and will "benefit the public and the environment." See 67 FR 80206. Specifically, sources with PALs can make changes without triggering the major NSR preconstruction permitting requirements, provided such changes remain below the limit established in their PAL and do not otherwise violate the requirements of the PAL. A PAL is an important technique that is oftentimes used in tandem with flexible permitting approaches such as advance approvals and AOSs as described more fully in this proposal.

The major NSR program applies to "major stationary sources," which include sources whose emissions exceed certain thresholds established in the statute, and to "major modifications" at those sources, which are modifications that exceed certain significance levels established in EPA's regulations. Under minor NSR, an owner or operator applies for a permit to construct or modify a facility, building, or other emissions unit, where the new construction or modification does not meet the emissions thresholds

for major NSR. If the proposed construction or modification is approved, the permitting authority issues a permit that contains emissions limits and other appropriate terms and conditions as necessary to protect the NAAQS and the increments and to assure consistency with the SIP.

Through our pilot experience, we found that State minor NSR requirements are among the most important in designing a flexible air permit for sources making frequent physical and operational changes because, absent an up-front authorization for these changes, an individual review and approval by the permitting authority is typically required before the changes can be made. Any changes authorized under minor NSR must be incorporated into the title V permit along with permit terms as necessary to assure compliance with all applicable requirements (for example, a MACT standard, which would be applicable to the source in addition to the ones addressed in the advance approval issued under minor NSR). The result is that the changes can be implemented, under protection of the permit shield, without any further review or approval by the permitting authority. In some cases, one or more AOSs may be used to complement an advance approval, for example where the source anticipates varying operation of the changed existing emissions unit in a manner that would implicate a set of applicable requirements different from those of the minor NSR advance approval, or where a different control approach would not be effective until and unless a particular change would be made to an existing emissions unit.

Given the provisions of their minor NSR programs, most of the States in which EPA supported flexible permit pilots ("pilot States") believed that they could issue construction approval for a wide spectrum of changes using certain boundary conditions established up front in the minor NSR permit. The actual conditions needed to accomplish this varied depending upon the requirements of the different State minor NSR programs. A number of techniques were successfully used in pilot permits to authorize a category of changes (i.e., a range of possible types of changes, such as "any of various physical changes to the rollers, drive mechanism, and other components of the coating section within a coating line") under minor NSR, including application of one or more plantwide emissions caps, designation of an entire process building or related activities as the "emissions unit" for purposes of minor NSR, and designation of an

71.6(a)(9). These proposed revisions affect both parts 70 and 71 and the revisions that we propose to each part are virtually identical. For ease of reference, this preamble discussion refers to the part 70 provisions. The discussion, of course, applies equally to the part 71 program revisions proposed. Section numbers given for the part 70 rules correspond directly to the analogous sections in part 71. The term "title V permit" refers to permits issued under either part 70 or part 71.

⁸ In implementing the pilot projects, EPA and other permitting authorities sometimes imposed certain constraints in the permits for advance approvals and AOSs beyond those expressly contained in applicable requirements or part 70. These additional constraints varied and were designed to provide permitting authorities the opportunity to gain experience with different flexible permitting approaches. Some of these constraints were anticipated to be removed at the time of permit renewal in the next version of the permit.

⁹ See "Evaluation of the Implementation Experience with Innovative Air Permits." A copy of this report is located in the docket for this rulemaking, or can be accessed at http://www.epa.gov/ttn/oarpg/t5/memoranda/iap_eier.pdf.

¹⁰ In August 2000, based in large part on the experience we gained through the pilot permit program, we issued a draft guidance document called White Paper Number 3, on which we solicited comment. See White Paper Number 3, 64 FR 49803 (Aug. 15, 2000). That draft guidance addressed various flexible permitting approaches, including the use of the reasonably anticipated AOS provision of 40 CFR 70.6(a)(9), Clean Buildings, and PALs. We received comments on the proposed rules and draft guidance and, in fashioning this proposal, considered those comments that addressed advance approval and AOSs as contained in 40 CFR 70.6(a)(9). As explained further below, we propose a definition of "alternative operating scenario" and certain other revisions to the part 70 regulations. We also propose revisions to parts 51 and 52 that provide for Green Groups.

existing state-of-the-art emissions capture and control system as fulfilling State control technology requirements (where they are applicable) for authorized changes occurring over the 5-year term of the title V permit. Pilot States, as part of granting advance approvals under their existing minor NSR programs, frequently required sources to send a notice to the permitting authority contemporaneous with the operation of any entirely new emissions unit relying upon the advance approval.

A common technique for achieving advance approval under minor NSR found in the pilots was the presence of one or more plantwide emissions caps. These caps serve to limit the maximum aggregate emissions associated with the anticipated changes so as to protect relevant ambient standards and increments and to facilitate an advance approval of a wide spectrum of changes under minor NSR. They also serve to limit the potential to emit (PTE) of the source below certain applicability thresholds in order to prevent implication of otherwise potentially applicable requirements (e.g., major NSR) or to function as a PAL (in the case of an existing major stationary source).

III. What is the purpose of this action?

The Agency has learned a great deal over the past decade through its pilot permit program. In light of that experience, the recent NSR Improvement rule promulgated in December 2002, and the comments we received on the proposed revisions to part 70 and draft White Paper Number 3, we propose revising the part 70 and 71 regulations and part 51 and 52 regulations.

As explained further below, the proposed revisions to the operating permit programs of parts 70 and 71 add a definition and clarify requirements for "alternative operating scenario" (or "AOS") and add a definition for "approved replicable methodology" (or "ARM"). The proposed revisions to the major NSR program add a definition and codify requirements for Green Groups.

The primary purpose of these revisions to parts 70 and 71 is to build upon the existing regulatory framework and ensure that the flexible permitting approaches with which we have experience are more readily and widely used. We recognize that many States' minor NSR and part 70 programs may already provide for the flexible permitting approaches proposed and that such States are currently able to implement these approaches. Because of the diversity of existing State minor

NSR programs and our pilot experience indicating the ability of many programs to approve categories of future changes in advance of making those changes, we are not proposing any revisions to the rules governing State minor NSR programs at 40 CFR 51.160 through 51.164. By undertaking the part 70 rulemaking, it is not our intention to preclude States from continuing to develop and use flexible permit approaches, where their current regulatory structure provides authority to do so. This rulemaking is instead intended to encourage the use of advance approvals where available and appropriate, and to eliminate any uncertainty that may exist with respect to AOSs and to provide a clear regulatory pathway governing flexible air permit development in that area by clarifying our 1992 part 70 regulations.¹¹

The proposed revisions to parts 51 and 52 affecting major NSR programs will increase options for flexible permits under that program. Namely, the proposed provisions for Green Groups will offer operational flexibility options for a defined section of a plant. This option would augment the plantwide strategy previously promulgated in the NSR Improvement rule (i.e., PALs). The proposed revisions would modify the major NSR regulations in a limited way. Consistent with the current NSR requirements, we propose to clarify that the definition of emissions unit would allow a number of emission activities, meeting certain criteria, to be treated as a single emissions unit (i.e., a "Green Group"). We are proposing to change the current NSR requirements to

¹¹ Note that other approaches to AOSs and advance approval may also be acceptable, although they may not provide as much flexibility as the approaches proposed. For example, some States include in a title V permit a type of conditional approval under which a source cannot construct or operate otherwise approved changes until a minor NSR approval is obtained for them. Essentially, this approach creates in a title V permit a structure that is a precursor to an AOS or an advance approval. Once the minor NSR permit is issued, the source can construct and operate the changes under the conditional approval, but a title V permit revision is needed to incorporate the now-available minor NSR terms and to award the permit shield (where available from the permitting authority). Where an AOS is involved, this incorporation is also needed to complete the AOS consistent with 40 CFR 70.6(a)(9). Our pilot permit experience suggests that in many instances changes subject to minor NSR can be approved in advance, although the ability for a State to provide such approvals will vary depending on the actual provisions of individual State rules. As a result, where advance approval of changes subject to minor NSR is available, we encourage its incorporation into the title V permit after or concurrent with obtaining the necessary minor NSR approvals in order to provide a permitting strategy with greater operational flexibility, certainty, and permitting efficiency than does a conditional approval approach.

provide expressly for Green Groups so as to authorize in a major NSR permit that emissions increases and changes within such a group can occur over a 10-year period, provided the increases and changes are authorized in advance through major NSR and the emissions activities associated with the Green Group are controlled to the level determined to be BACT/LAER. Also, the requirements of 40 CFR 52.21(j)(4) and 51.166(j)(4) requiring reevaluation of BACT for phased construction projects and of 40 CFR 52.21(r)(2) requiring continuous construction to commence within 18 months would not apply to NSR permits involving Green Groups.

We believe that these proposed revisions will increase operational flexibility, while ensuring environmental protection and compliance with applicable requirements. Moreover, based on our pilot experience, we anticipate that these revisions will promote improved environmental performance, although we recognize that the nature of the improvements will depend on the numbers and types of sources that opt to use the flexible permitting approaches described in this document.

IV. What experience did we gain from the 14-year pilot permit program?

This section summarizes the benefits of the pilot permits; includes an overview of the sources', permitting authorities', and our conclusions concerning the effectiveness of the pilot permits; and presents our recommendations regarding public participation in flexible permitting. Through the pilot permit program,¹² which began in 1993, we sponsored various projects, including projects undertaken through the Agency's "Pollution Prevention in Permitting Program" (P4). The pilot program generally involved the issuance of flexible air permits designed to accommodate operational flexibility.

The pilot permits facilitated operational flexibility by first obtaining advance approval under NSR. Frequently the authorizations involved changes that were to occur under a PAL or other facility-wide cap on emissions which, once approved by the relevant permitting authority, served both to assure that major NSR would not be

¹² Sources at the following locations participated in our pilot permit program: (1) 3M (St. Paul, MN); (2) Intel (Aloha, OR); (3) Lascos Bathware (Yelm, WA); (4) Imation (Weatherford, OK); (5) Cytec (Connecticut); (6) DaimlerChrysler (Newark, DE); (7) Merck (Elkton, VA); (8) Merck (Barceloneta, PR); (9) Saturn (Spring Hill, TN); (10) BMW (Spartanburg, SC); (11) Eli Lilly (West Lafayette, IN); (12) 3M (Nevada, MO); and (13) Imation (Camarillo, CA).

applicable to changes occurring under the cap and to assure that ambient standards would be protected consistent with the requirements of minor NSR.¹³ These caps were then incorporated into the title V permit with appropriate permit terms and conditions. In most cases, once these caps were incorporated into a title V permit, sources did not need to seek additional approvals from the title V permitting authority prior to implementing the changes authorized under the caps. As necessary, the title V permit would also contain additional terms and conditions needed to assure compliance with any other applicable requirements applying to such changes.

As noted above, following issuance of the pilot permits, we conducted an in-depth review of six of the permits.¹⁴ In selecting the permits to review, we focused our evaluation on those pilots with sufficient implementation experience to provide a reasonable historical record of performance, and we continue to believe that these pilots represent a sufficiently diverse reference point from which to judge the effectiveness of flexible air permits over a broad range of sources. Those reviews involved: (1) Detailed analyses of the sources' and permitting authorities' experiences developing and implementing the pilot permits; (2) a thorough review of information available in the public record at the permitting authority; (3) discussions with source personnel; (4) site visits to the source and meetings with permitting authorities; and (5) independent verification of compliance status and data collection and management techniques, including recordkeeping and related requirements.

Our analyses revealed several benefits of the flexible permitting approaches used in the pilots, and those benefits are summarized briefly below. We invite comment on any similar or different experiences others have had in piloting flexible air permits, particularly where

¹³ The VOC emissions caps used in the pilots were determined to be adequate for purposes of safeguarding the ozone NAAQS, but for other pollutants (e.g., air toxics) States sometimes required a replicable modeling procedure to screen the impacts of individual emissions increases relative to acceptable ambient toxics levels. Here an ambient dispersion model, complete with implementation assumptions, is approved into the minor NSR permit to evaluate any new pollutant of concern or increased existing pollutant emissions. Failure of a particular change to meet the screening levels triggered the need for case-by-case review of that change from the permitting authority.

¹⁴ The six permits that we analyzed were: (1) Intel (Aloha, OR); (2) 3M (St. Paul, MN); (3) Lasco Bathware (Yelm, WA); (4) DaimlerChrysler (Newark, DE); (5) Saturn (Spring Hill, TN); and (6) Imation (Weatherford, OK).

these experiences are relevant to this rulemaking.

A. What were the benefits of the pilot permits?

This section provides an overview of the environmental, informational, economic, and administrative benefits of the flexible pilot permits. For additional information on these and other benefits of the pilot program, please refer to the "Evaluation of the Implementation Experience with Innovative Air Permits," which documents all of our findings concerning the six pilot permits that we evaluated.¹⁵

1. Environmental Improvements Achieved Using Flexible Permits

In our evaluation, we documented several environmental performance benefits of the flexible pilot permits, including that the permits facilitated emissions reductions and increased P2 efforts. In particular, as discussed further below, the emissions cap framework in the flexible permits enabled significant reductions in actual plantwide emissions and/or emissions per unit of production. For example, of the five sources that had operated under their flexible permits for 3 or more years, all five achieved 30-to 80-percent reductions in actual plantwide emissions and/or emissions per unit of production. Actual emissions from the sixth source were reduced by 27 percent in the first year of operation under its flexible permit, but it is difficult to draw conclusions based on a single year of data. One company, using P2, lowered its actual volatile organic compound (VOC) emissions by 70% (from 190 tons per year (tpy) to 56 tpy), while increasing production. This allowed the facility to commit to keeping its VOC emissions below the major source threshold (i.e., become a "synthetic minor" source) so that it was no longer subject to major NSR. Another company lowered its actual VOC emissions from 1,400 tpy to less than 800 tpy, primarily through P2 associated with vehicle coatings and plant solvent usage.

We attribute the environmental performance improvement benefits of the flexible permits to several factors. First, several companies reported that the emissions caps had a "focusing effect," drawing company personnel(s) attention on how to manage most effectively all of the activities within the

¹⁵ Among other things, the report confirmed that the flexible permits are enforceable in a practical manner by EPA and permitting authorities. See Report at pages 5, 20. See footnote 9 of this preamble for information on how you can obtain the report.

plant, even those not subject to regulation, in an effort to minimize total plantwide emissions.¹⁶ An emissions cap also creates incentives for companies to pursue additional emissions reduction opportunities to increase the margin of compliance, which is the difference between the level of the emissions cap and the source's actual total plantwide emissions. Larger compliance margins typically reduce the risk of noncompliance with an emissions cap and create room under the cap to accommodate future emissions increases related to production or other operational changes. The cap on emissions from the plant, which is set during permitting at a level judged to be environmentally protective, ensures that such future emissions increases together with existing emissions will not exceed this protective level. To obtain a sufficient margin of compliance with these caps, sources frequently voluntarily controlled emissions on grandfathered units, which are units that would otherwise not be subject to control, and increased the stringency of control on regulated units.

Additionally, we found that the use of advance approvals and AOSs improved operational efficiency at the plants because companies knew in advance what changes were authorized, making resource allocation more efficient and accommodating the typically incremental, iterative nature of industrial process improvements. We also found that P2-related projects became more attractive to the companies when advance approved because such projects could be undertaken without the delay and uncertainty of future case-by-case approvals. In addition, P2-related projects reduced emissions and enabled sources to comply more easily with emissions limits such as plantwide emissions caps.

2. Informational Benefits Achieved Using Flexible Permits

We have consistently maintained that including advance approvals and AOSs in a title V permit ensures that the permit presents a complete representation of the operations of the permitted facility. See 57 FR 32276; July 21, 1992. By requiring information concerning flexible permits as part of the permit application, EPA and the permitting authorities are better able to assess, in aggregate, all proposed operations and, more significantly, to

¹⁶ See the pilot permit report, "Evaluation of the Implementation Experience with Innovative Air Permits," page 22.

determine all relevant applicable requirements and to include in the draft permit terms and conditions for each approved scenario to assure compliance with those applicable requirements and the requirements of part 70. By comparison, conventional permitting approaches provide for a more narrow, case-by-case view of facility modifications, soliciting comment only on the specific change proposed and requiring individual permitting actions in response to each request by the permittee for a change in the permit.

Our pilot experience confirmed the significant value of presenting a comprehensive picture of a source(s) operations over the term of the title V permit. Specifically, we found that with proposed flexible permits involving changes under a PAL or other emissions cap, permitting authorities were better able to understand the scope of planned changes at the source and the maximum, cumulative environmental effects of those changes. In addition, the flexible permit applications provided increased information to permitting authorities and the public in areas such as plantwide emissions performance and P2 activities, as compared to information typically available under conventional permit approaches. Likewise, permitting authorities indicated that on balance, flexible air permits enhanced the availability of information to the public during permit implementation.

Moreover, through the pilots, we found that early public outreach and involvement can be very useful in situations where new permitting techniques have not previously been used in a particular jurisdiction. We encourage permitting authorities to consider early outreach and public involvement when implementing such permitting techniques until the techniques become more widely used and public familiarity with them increases, recognizing that other factors (e.g., permit complexity) should factor into the permitting authority(s) consideration of supplemental public outreach efforts.

Our evaluation of the six pilot permits also revealed the importance of reporting related to plantwide applicability limits. The type of reporting required in several of the flexible permits is now codified in the PAL provisions of the December 2002 NSR Improvement rule.

3. Economic Benefits Achieved Using Flexible Permits

Participating companies in the pilot program reported that a flexible air permit significantly reduces the

uncertainty and transaction costs associated with the title V permitting process because the source obtains approval of the changes it reasonably anticipates implementing during the 5-year term of the permit at one time. Based on our evaluation of the six pilot permits, we found that the increased certainty and reduced transaction costs improved participating companies' ability to compete effectively in the market and enabled them to retain, and in some cases, create jobs. For example, one company reported that its pilot permit allowed it to remain highly responsive to the marketplace and thereby avoid either lost sales and/or permanent loss of market share. An automotive company indicated that its flexible permit was a principal factor in the plant's selection to manufacture an engine model to be used in the company's global vehicle assembly operations, leading to the creation of 700 jobs. The permit helped the plant secure the engine contract because it enabled the plant to reduce the project time line for production of the new engine to 24 months and to accommodate future changes with minimal delay.¹⁷

Several companies also indicated that obtaining authorization of reasonably anticipated changes improved the predictability of change implementation time frames for project planning and avoided what can be substantial opportunity costs. For example, one company reported that its flexible permit likely saved hundreds of business days associated with making operation and process changes to ramp up production for new products, respond to market demands, and optimize production processes. Industry estimates of the opportunity costs of production downtime and time delays run as high as millions of dollars in just a few days due to lost sales and other factors.¹⁸

Notwithstanding that the implementation of flexible air permits often was associated with more production-related jobs, pilot companies also reported that flexible air permits significantly reduced permit-related staff time and related resource costs because there was no longer a need to seek and process multiple case-by-case permit actions because the changes reasonably anticipated at the facility were already included and approved in

the permit. For example, an automotive company estimated that it saved approximately 505 hours of staff time during its initial flexible permit term. Another pilot company reported permit-related staff time savings of 1,200 to 1,600 hours per year during its initial title V permit term. In both cases, companies reported that the time savings enabled environmental personnel to focus more time and attention to other environmental management activities, including P2. Companies further indicated that the time necessary to record changes in operating scenarios in the on-site log, as required by 40 CFR 70.6(a)(9), was significantly less than the permit-related staff time necessary to prepare permit applications under a general change-by-change permitting approach.

4. Administrative Benefits Achieved Using Flexible Permits

Our pilots evaluation found that the flexible permits resulted in a net cost savings both for the source, as noted above, and for the permitting authority. We specifically found that the resources permitting authorities expended on processing permitting applications under title V and the NSR programs were reduced under the pilot program, since the operational flexibility provisions, like 40 CFR 70.6(a)(9), eliminated the need to submit a permit application for each operational change. For example, one permitting authority estimated that each facility change made pursuant to a flexible permit saved the permitting authority approximately 20 to 40 hours in staff time that otherwise would have been incurred had the facility, instead of obtaining the advance approvals and AOS, sought title V permit modification on a change-by-change basis. In fact, permitting authorities reported that the administrative cost savings during implementation of the pilot flexible permits indicate that increased use of flexible permitting will enable them to reduce permitting backlogs and to focus resources on other higher priority environmental needs.

These cost savings must be put in context of a higher front-end cost to design an acceptable permit approach to pilot (a cost that should decrease as more experience with flexible permits occurs in tandem with a better defined policy). The two participating permitting authorities that attempted to quantify this effect believed that, even with the higher front-end design costs associated with their pilot, the initial experience suggested there would be a net reduction in the overall administrative costs associated with

¹⁷ See "EPA Flexible Permit Implementation Review: Saturn Permit Review Report," pages 9 and 34, which is available at http://www.epa.gov/ttn/oarpg/t5/memoranda/iap_spr.pdf.

¹⁸ Findings are discussed in more detail in the "Evaluation of Implementation Experiences with Innovative Air Permits" report, under Finding 8.

these permits after 2–3 years of implementation. We believe that the administrative benefits achieved for the evaluated pilot permits are broadly indicative of the benefits generally available from flexible air permits. In fact, as flexible air permitting becomes more mainstream, we expect the front-end costs to design such permits to be reduced, resulting in faster recouping of these expenses and greater benefits over time.

B. What were the conclusions of the sources, permitting authorities, and EPA about flexible permits?

The sources that obtained a flexible air permit maintain that such a permit is a valuable business asset. These sources regularly relied upon the operational flexibility provided in the permit to take advantage of opportunities in the market place. These sources also indicated that the following circumstances heightened the need for and benefits achieved using a flexible air permit:

- Short time frames for bringing new products to market (time-to-market needs).
- Need to accommodate rapid shifts of product lines, processes, and production levels to enable optimal asset utilization in a company's network of facilities.
- Active advanced manufacturing programs (e.g., lean manufacturing, Six Sigma, agile manufacturing) that require rapid and iterative changes to operations and equipment.¹⁹
- Anticipated renovation or expansion projects.
- Active P2 programs with continual process improvements.

The permitting authorities in the pilot program concluded that the permits provided significant environmental

¹⁹ These manufacturing concepts have been defined in various ways. Generally, however, lean manufacturing is defined as an initiative focused on eliminating all waste in manufacturing processes. Principles of lean manufacturing include zero waiting time, zero inventory, scheduling (internal customer pull instead of push system), batch to flow (cut batch sizes), line balancing, and cutting actual process times. Six Sigma is defined as a rigorous and disciplined methodology that utilizes data and statistical analysis to measure and improve a company's operational performance, practices, and systems. Six Sigma identifies and prevents defects in manufacturing and service-related processes. In many organizations, it simply means a measure of quality that strives for near perfection. Agile manufacturing emphasizes the ability to thrive and prosper in an environment of constant and unpredictable change and includes the use of tools such as rapid prototyping, rapid tooling, and reverse engineering to address customers who require small quantities of highly custom, design-to-order products, and where additional services and value-added benefits like product upgrades and future reconfigurations are as important as the product itself.

performance and administrative benefits. They also expressed support of flexible permitting techniques as a permitting option. The permitting authorities believed that flexible permits are particularly effective when applied to sources with demonstrated operational change needs and the operational and technical capacity to meet all relevant requirements associated with advance approvals, AOSs, PALs, and other operational flexibility provisions.

In general, based on our pilot experience, we believe that sources with certain characteristics are the ones that can both meet the requirements of operational flexibility provisions and benefit from them. These characteristics include: A strong compliance history, maintenance of a well-documented and effective environmental management system, commitment to continuous environmental improvement, attentiveness to P2, ability to track and manage operational changes and emissions, and the existence of good community relations. The types of sources that exhibit these characteristics typically include, for example, the members of EPA's National Environmental Performance Track Program (*see <http://www.epa.gov/performance-track/>*) and similar State environmental leadership programs. Our Performance Track program illustrates our ongoing commitment to reward and recognize exemplary environmental performance.

We currently intend to allocate our implementation resources for the final rule on a priority basis to assist Performance Track facilities that wish to obtain flexible air permits. More specifically, we intend to deploy resources and tools designed to assist Performance Track facilities in their efforts to capture the opportunities provided through flexible air permits. Our efforts to facilitate the implementation of flexible permits could include, for example, education and outreach components that would allow Performance Track members to assess the costs and benefits of a flexible permit. We also intend to provide EPA technical resources and expertise through identified points of contact to facilitate the resolution of technical and other issues (should any arise) associated with implementing a flexible air permit at a Performance Track facility. We encourage State permitting authorities to consider a similar prioritization of resources when issuing flexible air permits to sources that are similarly situated to Performance Track companies.

C. What are EPA's recommendations for public participation in flexible permitting?

Based on our experience with pilot permits, we believe that flexible permits provide at least as much environmental protection as conventional permits and promote superior environmental performance. Nevertheless, we also recognize that flexible permits will contain features, such as AOSs, ARMs, advance approval of minor NSR, or Green Groups, that may not be familiar to the reviewing public. For this reason, we recommend that permitting authorities consider using their discretion to enhance the public participation process when warranted for a particular flexible permit. Some ideas for doing so are described below.

During the permitting process, permitting authorities could consider making the permit application available to the public soon after receipt. We found for these pilot permits that early outreach to the community, rather than waiting until the draft permit was prepared, was an effective public participation strategy.

The minimum public comment period required for a title V permit renewal or significant permit modification is 30 days. Where a significant amount of a permit's content consists of terms to incorporate operational flexibility, we suggest that you consider expanding the comment period to 45 days or more. Note, however, that for some of our pilot permits, early outreach to the public was sufficient to resolve community questions and comments early in the process, so that by the time of the public hearing and comment period no adverse comments were received.

Finally, in order to ensure adequate technical support and accessibility for the public in their efforts to understand and comment upon flexible air permits, we suggest that States provide a principal point of contact for responding to technical questions and ensure the availability of draft permits, applications, and technical support documents on an Internet Web site. We believe that any additional costs here will be offset by the subsequent administrative cost savings to the permitting authority resulting from the reduced need to process permit revisions for sources with flexible permits.

V. What are the key elements of this proposal?

This section summarizes the key elements of this proposal. A more detailed discussion of these elements as well as other proposed regulatory

changes are provided below in sections VI and VII.

A. What are the key elements of proposed revisions to parts 70 and 71?

There are several key regulatory revisions that we are proposing to parts 70 and 71. First, we are proposing to modify 40 CFR 70.6(a)(9) generally to refer to “alternative operating scenarios,” as opposed to “operating scenarios.” In addition, we are proposing to define the term “alternative operating scenario (AOS)” and codify certain requirements described in this proposal for AOSs. Specifically, we propose to define “alternative operating scenario (AOS)” as a scenario authorized in a part 70 permit that involves a physical or operational change at the part 70 source for a particular emissions unit, and that subjects the unit to one or more applicable requirements that differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

This document also discusses our proposal for “approved replicable methodologies” (ARMs) and the way in which they may be approved into the title V permit by the permitting authority. We are proposing to define an ARM as part 70 permit terms that: (1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of part 70, such that the protocol is based on sound scientific/mathematical principles and provides reproducible results using the same inputs; and (2) require the results of that protocol to be used for assuring compliance with such applicable requirement or requirement of part 70, including where an ARM is used for determining applicability of a specific requirement to a particular change. An ARM, however, cannot modify an applicable requirement in any way. As explained further below, an ARM can be particularly useful in facilitating the implementation of advance approvals and AOSs, but can also be used independent of them.

Also in this document, we are proposing that a source include in its semi-annual monitoring reports under 40 CFR 70.6(a)(3)(iii) information relating to any AOS and/or ARM implemented during the reporting period. This information should help permitting authorities remain informed as to which AOSs and ARMs in the title V permit are being implemented at the site and at which time.

We are not proposing revisions to any applicable requirement (other than revisions to parts 51 and 52 providing for Green Groups—see section VII below) in order to facilitate advance approvals. As mentioned above, our pilot experience confirms that obtaining advance approval under minor NSR is often a critical element in the design of a flexible air permit. This experience also suggests that many State minor NSR programs may already provide the legal authority necessary to issue minor NSR permits that accommodate various types of operational flexibility which can be readily incorporated into title V permits. We are therefore not proposing any revisions to the minor NSR regulations. Nonetheless, we encourage States to implement advance approvals in response to requests by sources under their existing minor NSR programs as appropriate and to seek additional authority where they do not currently have such discretion. Based on our pilot experience, we also believe that the ability to advance approve a particular change with respect to other applicable requirements requiring a specific authorization can often be determined without further regulatory changes.

Similarly, we are not proposing to revise part 70 to address how advance approvals might be accomplished. We believe that part 70 already requires incorporation of the terms in a permit issued to advance approve changes under certain applicable requirements. For example, permit terms contained in a State’s minor NSR permit are themselves deemed to be applicable requirements as defined in section 70.2 and, as such, are to be included in the title V permit for the relevant source. Frequently, however, the permitting authority may need to augment the terms of NSR permits authorizing the advance approval of certain changes in order that these changes can be made without further review or approval. These terms would be added as necessary to assure compliance with other applicable requirements also implicated by the advance approved changes which were unaddressed in the specific authorizations obtained for them. As would be the case for any other applicable requirement, the part 70 permit must meet the requirements of part 70 (e.g., monitoring, reporting, and compliance certification) with respect to advance approvals. When the title V permit terms relating to advance approvals are effective, then the changes which were advance approved would occur under protection of the permit shield (where available and granted by the permitting authority).

*B. What are the key elements of proposed revisions to parts 51 and 52?*²⁰

With this document, we propose adding a definition of “Green Group.” We also propose to add monitoring, recordkeeping, reporting, and testing safeguards applicable to Green Groups to enhance the availability of information and ensure that these groups function as intended.

A Green Group consists of designated emissions activities that are ducted to one common air pollution control device that is determined to meet BACT or LAER, as applicable, for the entire group of emissions activities taken as a whole. A Green Group is, by definition, a single emissions unit for purposes of major NSR. In addition to designated existing emissions activities, a Green Group may include changes (e.g., reconfiguration and/or expansion) to these existing activities and/or the addition of new emissions activities ducted to the control device, either of which could result in an increase in capacity and a significant increase in actual emissions. To establish a Green Group, the source must go through the major NSR permitting process and obtain a permit. To protect the NAAQS, PSD increments, and Class I areas, the proposed rules require an annual emissions limit and any necessary short-term limits for the Green Group, as well as comprehensive monitoring, reporting, recordkeeping, and testing under NSR for Green Groups to assure compliance with the limit(s).²¹

VI. What changes are we proposing to parts 70 and 71?

We are proposing revisions to parts 70 and 71 to build upon the existing framework in 40 CFR 70.6(a)(9), which authorizes AOSs. As discussed below in section VI.A, we are proposing to add a definition for AOS and to provide for the use of consistent terminology for AOSs. In section VI.B, we describe the information that the source must provide in a title V permit application under 40 CFR 70.5(c) when seeking approval of an AOS, and in section VI.C we discuss the terms that must be included in a title V permit for an AOS and for an ARM. Section VI.D presents two examples of flexible permits using

²⁰ Although we are proposing certain revisions to the major NSR program, we are proposing no changes to any other applicable requirement, as that term is defined in 40 CFR 70.2.

²¹ The NAAQS and increments for some pollutants are established over short-term periods as well as annually. For example, annual, daily, and 3-hour NAAQS and increments are defined for sulfur dioxide. Accordingly, some NSR permits include emissions limits for these shorter periods.

AOSs. In section VI.E, we address additional issues related to AOSs, and in section VI.F we detail the minor differences between the proposed revisions for part 70 and part 71. In the case of both AOSs and ARMs, the State must have sufficient authority to grant them if proposed by a source, but the permitting authority retains the discretion as to the appropriateness of doing so on a case-by-case basis, depending on the specific facts of the situation.

A. What is our proposed definition of an AOS, and how does it provide a source operational flexibility?

As mentioned previously, the concept of an AOS is not a new one. Under existing 40 CFR 70.6(a)(9), a source may request in its permit application that the permitting authority approve reasonably anticipated operating scenarios. If the permitting authority determines that the proposed operating scenarios are consistent with the requirements of part 70 and approves them, it would include those scenarios in the source's part 70 permit, and the source may implement them without further review or approval. Fundamentally, the permitting authority must ensure that the proposed operating scenarios are adequately described such that all applicable requirements associated with each scenario are identified and appropriate terms and conditions to assure compliance with these requirements are included in the permit. In addition, the permitting authority must ensure that the source obtained all specific authorizations required under any applicable requirements (primarily those under minor NSR). The provisions of 40 CFR 70.6(a)(9) were promulgated consistent with section 502(b)(6) of the Act, which mandates the streamlining of the application and permitting processes.

There may be situations where a permitting authority does not approve an AOS which has been proposed by a source for a particular emissions unit. For example, a permitting authority may reject an AOS proposed by a source if it determines that the source's description of the scenario is insufficient to identify all applicable requirements or craft appropriate terms and conditions to ensure compliance with applicable requirements, or if required authorizations under applicable requirements triggered by the AOS have not been obtained.

To clarify our intent regarding AOSs, we propose the following definition at 40 CFR 70.2:

Alternative operating scenario (AOS) means a scenario authorized in a part 70

permit that involves a physical or operational change at the part 70 source for a particular emissions unit, and that subjects the unit to one or more applicable requirements that differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

Thus, the change at the part 70 source must be physical or operational in nature and must either subject a particular emissions unit to at least one new applicable requirement or eliminate at least one requirement that applied to the unit prior to the change. In addition, the change, in order to be eligible for an AOS, must be allowable under all applicable requirements.²² For example, a change allowed under an applicable MACT standard but also subject to minor NSR would not be eligible for inclusion in an AOS until the source obtains the necessary preconstruction approval. That is, the source requests and obtains from the permitting authority a minor or major NSR permit, as applicable, authorizing the change to occur, and the terms of the NSR permit are then incorporated into the source's title V permit as part of an AOS. We are proposing this definition not to change the current requirements for AOSs but rather to foster a common and consistent understanding of the types of situations that AOSs can address.

The types of physical or operational changes which could trigger an AOS can vary widely. Such changes potentially encompass a wide spectrum of activities undertaken by a source which cause one or more applicable requirements to apply (or to no longer apply) to the emissions unit undergoing the change. Nonetheless, these changes must be consistent with any limitations contained in applicable requirements that are triggered. Thus, anticipated physical and operational changes must be described adequately to identify the applicable requirements.

In some cases, physical or operational changes may be exempt from certain

²² Failure to anticipate and include a particular change under an AOS does not in and of itself bar the source from implementing the change if it can satisfy the requirements of the off-permit provisions in part 70, such as those set forth at 40 CFR 70.4(b)(12) and (b)(14). The permit shield does not extend to changes made pursuant to these provisions. See, e.g., 40 CFR 70.4(b)(12)(i)(B), (b)(12)(ii)(B), (b)(14)(iii). For example, during the term of its part 70 permit, a source might obtain approval under minor NSR to construct and operate a new emissions unit. Where available and granted by the permitting authority, the source can implement the change under the off-permit provisions, assuming that the change is not addressed or prohibited by the terms of the source's part 70 permit.

applicable requirements but not from others. For example, the New Source Performance Standards (NSPS) and major NSR regulations specifically exempt from their purview certain types of changes, such as those that do not reach the threshold for a "modification." These same changes, however, could still implicate other applicable requirements. For example, a switch to another fuel which a unit is already capable of accommodating could trigger a SIP requirement or a Maximum Achievable Control Technology (MACT) standard, while being exempt from NSPS and major NSR. Such SIP and MACT requirements must, therefore, be identified as applicable requirements in an application for an AOS governing the fuel switch.

Under this proposal, activities that do not involve a physical or operational change to the regulated equipment do not constitute an AOS, even when such change is made to switch between compliance options provided for in an applicable requirement. For example, suppose a source chooses to switch between the compliance options allowed under an applicable requirement (e.g., a MACT standard or NSPS). Under the Printing and Publishing Industry MACT standard (40 CFR part 63, subpart KK), a product and packaging rotogravure affected source that uses compliant inks and coatings (i.e., inks and coatings with low HAP content) may demonstrate compliance for each month by any one of six compliance options set out in the standard. Each of the compliance options involves slightly different applicable requirements in that different characteristics of the inks and coatings must be tracked and different calculations must be carried out monthly to demonstrate compliance.

We propose that a source may switch between such compliance options without including AOSs for each compliance option in its permit. Rather, the compliance options may simply be included in the permit as alternative requirements of the applicable standard. We acknowledge, however, that this approach may raise issues regarding whether an operational change at the source has triggered the change in the compliance option. For example, subpart KK also provides for compliance options that use an add-on control device rather than compliant inks and coatings. If a source alternates between compliant materials (using one of the six associated compliance options) and noncompliant materials (complying through use of a thermal oxidizer), should this be characterized

primarily as a shift for compliance purposes that does not require an AOS in the permit, or as an operational change requiring an AOS? What if the source alternates among the compliance options for compliant inks and coatings based on the characteristics of the materials that it uses in each month? We request comment on the issue of whether a switch from one compliance option to another is better characterized as allowable under an applicable requirement or as a physical or operational change that triggers a different applicable requirement and therefore requires an AOS. Regardless of the approach ultimately adopted, we strongly recommend that permitting authorities and sources work together to include in the permit those compliance options allowed under the applicable requirement that a source may reasonably anticipate using during the term of the permit. Whether incorporated as AOSs or simply as compliance alternatives, we believe that a title V permit can be fashioned to allow a source to switch between compliance options without needing a permit revision to do so.

The second criterion for a shift in operating scenario under this proposed definition is that the triggering change must cause: (1) At least one applicable requirement to apply which was not in effect before the change; and/or (2) at least one applicable requirement to no longer apply as a result of the change. "Applicable requirement" as defined in 40 CFR 70.2 includes all the separate emissions reduction, monitoring, recordkeeping, and reporting requirements of a particular standard or SIP regulation and all the terms and conditions of preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I of the Act.

As such, AOSs can be quite effective where existing units at sources simply make physical or operational changes that do not require any advance approval, but they nonetheless implicate one or more different applicable requirements. This may occur, for example, where an existing boiler is permitted to combust different fuels, which implicate different sets of applicable requirements. We elaborate on this situation below in section VI.D, Example 1. Example 2 in that section presents a situation where AOSs are used in conjunction with advance approvals.

Under the second criterion above, AOSs are often separate and distinct from advance approvals. For example, we propose that the addition of a new emissions unit pursuant to an advance

approval does not require an AOS, unless the particular unit, once operational, requires the flexibility to make subsequent physical or operational changes that will cause applicable requirements to apply that are different from those applicable to the authorized baseline scenario for the new unit upon operation. We believe that construction and operation of a new unit authorized in an advance approval does not represent a shift in operating scenario for the unit, but rather represents beginning its initial or baseline operation.²³ However, we solicit comment on whether such new unit additions should instead be characterized as AOSs.

Similarly, incorporation in a part 70 permit of an advance approval contained in an authorizing NSR permit for a physical or operational change to an existing emissions unit frequently would not require an accompanying AOS, where the terms of the NSR permit containing the advance approval are effective for the unit upon issuance of the part 70 permit. For example, suppose a source, in the process of renewing its part 70 permit, obtains a minor NSR permit that advance approves a change to an existing emissions unit, and the NSR permit includes new requirements (such as an increased level of control and associated MRR) that do not currently apply to the unit in its baseline operations. If the source agrees to include the new NSR requirements in its part 70 permit effective upon issuance and, notably, prior to making the authorized change, no AOS is needed to supplement the advance approval.²⁴ This is because no applicable requirements will begin to apply, or cease to apply, when the authorized change is subsequently implemented. One or more AOSs, however, would be needed in the permit if the source wishes to build in the flexibility to make subsequent physical or operational changes at the emissions

²³ An advance approval that is incorporated into a part 70 permit remains subject to all the conditions of the underlying authorization. For example, if an underlying minor NSR permit is contingent upon the source commencing construction of the authorized change(s) within a certain period, the authorization in the part 70 permit also will lapse if the source fails to meet the required deadline. The source is responsible for obtaining any extensions or additional authorizations as necessary to keep the advance approval in the part 70 permit in effect.

²⁴ If any other applicable requirements would be triggered by the change that are not addressed by the minor NSR advance approval, they also must be included in the part 70 permit and become applicable upon its issuance. Alternatively, such requirements may be prevented from applying through limits contained in the permit (e.g., a PAL or PTE cap(s)).

unit that would trigger new applicable requirements or cause existing requirements to no longer apply.

In contrast, the proposed definition of AOS does include scenarios where the new applicable requirements implicated by advance approved changes at existing units are not effective until the source actually makes the change. For example, an advance approval might authorize modifications to an existing process line under minor NSR, provided that the source meets an NSPS applicable to the line upon its modification. Alternatively, we also propose that this situation could be characterized as an authorized advance approval that does not require incorporation of an AOS into the part 70 permit. That is, no AOS would be required where implementation of an authorized change irreversibly triggers the new applicable requirement(s), such that the emissions unit cannot return to its baseline status in the future. As such, this scenario is the creation of a new baseline scenario, analogous to the addition of a new emissions unit. We solicit comment on this issue and the two approaches we have proposed. We also solicit comment in general on our proposal to distinguish from AOSs all advance approvals, including those involving the addition of new units.

In addition to proposing a definition of AOS, we are also clarifying the regulations, because the regulations use inconsistent terminology when referring to AOSs. See e.g., 40 CFR 70.4(d)(3)(xi) (referring to "(alternate scenarios)"). For consistency purposes, we propose to use the term "alternative operating scenarios" (or AOSs) throughout the regulations when referring to an alternative operating scenario under 40 CFR 70.6(a)(9). See proposed 40 CFR 70.4(d)(3)(xi) and 40 CFR 70.5(c)(2) and (7). Note also that any specific "AOS" listed in a permit refers to a specific operating scenario which differs importantly from the previous scenario (also contained in the permit) in that one or more different applicable requirements are implicated by the shift in operating scenarios. The scenario that reflects the current operations and applicable requirements of the source at the time of permit issuance is called the "baseline scenario."

A key objective for a source requesting an AOS is to identify and describe in the title V permit application those changes that are reasonably anticipated to occur for each emissions unit during the term of the title V permit. This proposal clarifies that AOSs can be used to provide operational flexibility for a variety of situations, ranging from a single specific

anticipated alternative scenario to multiple scenarios, including somewhat less specific (but still nonetheless bounded) scenarios. In all situations, however, the contemplated changes must be described in the permit application in sufficient detail for the relevant emissions units such that the permitting authority can determine whether all applicable requirements have been identified and can craft appropriate terms and conditions to assure compliance with such requirements. Where differing applicable requirements would apply to a particular emissions unit, depending upon the nature and extent of the change made, the permit should contain alternative terms and conditions as needed to assure compliance with all applicable requirements under each AOS which is reasonably anticipated to occur.

If the permitting authority approves the proposed AOSs for a particular emissions unit, it will include in the title V permit a description of the anticipated changes associated with each approved AOS, and for each AOS will include associated applicable requirements and terms and conditions that assure compliance with each identified applicable requirement, as well as terms and conditions that assure compliance with the related part 70 requirements relevant to the AOSs.

Alternative operating scenarios may vary in their complexity. At one extreme is a simple situation where a source seeks approval for operating scenarios that involve a very specific type and number of changes to the defined baseline operations of the relevant emissions unit(s) (i.e., the changes can be described exactly). An example of this situation is the combustion of various fuels in a boiler capable of burning different fuels (where combustion of each type of fuel is subject to different SIP requirements). See Example 1 discussed below.

A more complex situation involves sources seeking approval for AOSs encompassing a wider spectrum of reasonably anticipated changes. Sources here may not be able to determine precisely in advance (i.e., at the time of permitting) which of the changes and implicated AOSs will be implemented for the relevant emissions unit(s). Depending on future market behavior, the source eventually may implement all or only some of these changes.

The type of detail needed to describe an AOS and the changes anticipated to occur under it can vary. Certainly the need for greater detail is dependent upon what is required to determine the applicable requirements implicated by

the anticipated changes. In many cases, the number of applicable requirements for anticipated changes can be reduced, without loss of flexibility, through strategic use of boundary conditions on the AOS. Boundary conditions help to define the relevant applicable requirements implicated by authorized physical or operational changes, which, in turn, enables the permitting authority to assure that all applicable requirements and requirements of part 70 are contained in the permit when designing AOSs.²⁵ For example, operational restrictions (such as those on the type or amount of materials combusted, processed, or stored) can be used to delineate the scope of the AOS by limiting which applicable requirements apply under them.

The approaches approved to assure compliance with applicable requirements can also affect the implementation of anticipated AOSs and, therefore, indirectly affect the changes approved under them. That is, authorized changes must not adversely impact the effectiveness of the control devices or monitoring approaches required by an AOS approved in the permit. For example, changes involving substances which are not effectively controlled by the control device required in the permit could not be approved. This would also be true for physical or operational changes which would render inaccurate the monitoring procedures approved in the permit for assuring compliance with an applicable requirement (e.g., PTE limit).

Compliance assurance terms for AOSs and advance approvals can be greatly simplified where the applicable requirements can be streamlined (i.e., the compliance terms are based on the most stringent requirement applicable to the proposed changes and are effective upon permit issuance). In guidance generally referred to as "White Paper Number 2," we interpreted our part 70 rules to allow sources to streamline multiple applicable requirements that apply to the same emissions unit(s) into a single set of requirements that assure compliance with all the subsumed

²⁵ Boundary conditions can also be used to restrict the scope of advance approvals. The pilots primarily used boundary conditions for this purpose. Such conditions typically involved restrictions that prevented certain different applicable requirements from applying to the changes otherwise authorized under minor NSR. For example, a source owner opted to avoid the applicability of major NSR by accepting an emissions limit that restricts the PTE of the source to below the threshold at which that requirement would apply, or, in the case of an existing major stationary source, a PAL that designates an emissions limit below which major NSR would not apply to changes made at the source.

applicable requirements.²⁶ If all the applicable requirements that apply to a set of changes are streamlined in the permit and the permitting authority approves the proposed streamlining, the source need only comply with the streamlined requirement. This benefits all parties by simplifying and focusing the compliance requirements contained in the permit.

It should be noted that changing to an AOS cannot be used to circumvent applicable requirements or to avoid an enforcement action. A switch to an AOS does not affect the compliance obligations applicable to a source under its previous operations.

B. What information is necessary in a title V permit application to seek approval of an AOS?

Because the application forms the basis for the content of the title V permit, the discussion below is relevant to the content of a permit that authorizes AOSs. This section clarifies the requirements for a complete application and discusses minor proposed revisions to these requirements.

The provisions of 40 CFR 70.5(c) contain the information that must be submitted in a complete title V permit application, including information concerning proposed AOSs.²⁷ We are proposing minor revisions to 40 CFR 70.5(c) to clarify how certain aspects of the requirements in that section should be addressed when a source applies for approval of AOSs.

Under the provisions of 40 CFR 70.5(c), the source generally must describe the emissions of all regulated air pollutants (as defined at 40 CFR 70.2) from any emissions unit, identify all applicable requirements that apply to each emissions unit, and describe how it will meet these applicable requirements. The source must provide this information for existing operations

²⁶ As explained in White Paper Number 2, sources that seek to streamline applicable requirements should submit their request as part of their title V permit application, identifying the proposed streamlined requirements and providing a demonstration that the streamlined requirements assure compliance with all the underlying, subsumed applicable requirements. Upon approval of the streamlined requirements, the permitting authority would place the requirements in the title V permit. See "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program," March, 5, 1996, for the complete guidance on the streamlining of applicable requirements (<http://www.epa.gov/ttn/oarpg/t5/memoranda/wtppr-2.pdf>). Where the source wishes to streamline the advance approval under NSR with all other relevant applicable requirements, the same title V permit application can address both actions.

²⁷ For the complete text of the elements that must be included in a title V application, see 40 CFR 70.5(c).

(i.e., baseline operations) and for any reasonably anticipated changes for which an AOS is proposed. The description of AOSs in title V permit applications may vary depending on the situation (as previously discussed). However, in every case the level of detail in the description must be sufficient for the permitting authority to write permit terms and conditions that assure compliance with all applicable requirements and the requirements of part 70 that will apply to the proposed AOS. See 40 CFR 70.5(c)(3)–(7); 40 CFR 70.6(a)(9)(iii). If the source adequately describes proposed AOSs in the part 70 permit application and the permitting authority includes them in the permit consistent with 40 CFR 70.6, the source may subsequently implement the physical and operational changes under protection of the permit shield (where available and granted by the permitting authority) without triggering the permit modification provisions of 40 CFR 70.7.

Similarly, the source must meet the provisions of 40 CFR 70.5(c) concerning advance approvals which are to be incorporated into the title V permit. Where a change is authorized in an NSR permit and the permit contains terms which would be effective upon issuance of the title V permit and would assure compliance with all applicable requirements, then a straightforward incorporation of the terms of the NSR permit into the title V permit is all that is necessary. However, where the NSR advance approval terms would be effective upon title V permit issuance but would not address some other requirement(s) that will apply to the NSR-authorized changes (e.g., a MACT standard), then additional information about the changes relative to these other requirements must be provided to the permitting authority in the part 70 application. The permitting authority would then develop permit terms sufficient to assure compliance with all requirements applicable to the NSR-approved changes as part of the title V permit issuance, modification, or renewal process. Use of a streamlined limit is one acceptable approach when requested by the source (see footnote 26 and example 3 below).

We are proposing to revise 40 CFR 70.5(c)(2) and (7) to use the term “AOS” in the interest of consistent terminology. Existing 40 CFR 70.5(c)(2) uses the term “alternate scenario,” while existing 40 CFR 70.5(c)(7) uses “alternative operating scenario.” We believe that revising these paragraphs to use consistent terminology, along with proposing a definition for “AOS” and conforming changes in other sections,

will improve the clarity of the affected paragraphs and reduce any confusion.

We are also proposing to revise 40 CFR 70.5(c)(3)(iii), (c)(7), and (c)(8) to clarify our intent regarding the information that must be included in an application that proposes AOSs for approval by the permitting authority. The proposed revisions to each of these sections are described below, along with the rationale for proposing them.

The introductory text in 40 CFR 70.5(c) states generally that the application must include information for each emissions unit. Existing 40 CFR 70.5(c)(3)(iii) further requires that the application provide the emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable reference test method. We are proposing to clarify this regulatory requirement as it applies to sources subject to title V permitting requirements that employ an emissions cap (e.g., PALs, PTE, Green Groups). In particular, we are proposing that for the operation of any emissions unit authorized under an annual emissions cap, a source can meet 40 CFR 70.5(c)(3)(iii) by reporting the aggregate emissions associated with the cap. For example, a source may take a plantwide cap on its PTE so that it will not become a major source for purposes of PSD, thereby assuring that PSD will not apply to any changes made at the source. For purposes of the title V permit application and this emissions cap, the source need not provide individual tpy figures for any new or modified emissions units authorized under minor NSR. Rather, emissions from such units would be reported in the title V permit application as part of the aggregate emissions under the PTE cap. Additional information may, however, be required to describe the scope of any changes authorized in minor NSR to occur under any emissions cap or to provide additional information relevant to other requirements applicable to these changes.

Under the proposed approach, an emissions cap can act as a constraint on annual emissions from each emissions unit under the cap as well as on the aggregated emissions from the group of units. That is, in the extreme, a unit could emit up to the full amount of the cap if all other units under the cap had zero emissions. Thus, for a group of emissions units under an annual emissions cap, the 40 CFR 70.5(c)(3)(iii) requirement for unit-by-unit tpy figures can be met by reporting in the permit application that the emissions cap represents the upper limit on emissions both from each unit in the group and from the entire group. This proposed

revision to 40 CFR 70.5(c)(3)(iii) simply clarifies that in this particular situation, more specificity is not needed.

Reporting emissions data in the above proposed manner in the title V permit application is permissible (including in the case of a plantwide emissions cap), except where the permitting authority determines that more specific tpy information is needed (e.g., where an applicable requirement for a specific emissions unit depends on the emissions type or level).

We are proposing to revise 40 CFR 70.5(c)(7) in two ways. The existing language in 40 CFR 70.5(c)(7) specifies that the application must include “additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to 40 CFR 70.6(a)(9) of this part or to define permit terms and conditions implementing 40 CFR 70.4(b)(12) or 40 CFR 70.6(a)(10) of this part.” First, we propose to modify the existing language to clarify that the permitting authority can require additional information from the source not only for adequately defining the AOS, but also, as necessary, to craft permit terms and conditions implementing the proposed AOSs under 40 CFR 70.6(a)(9). We believe that this proposed revision is implicit in the existing language of 40 CFR 70.5 (e.g., 40 CFR 70.5(c)(5)), but that a clarification is appropriate.

Second, we propose to revise 40 CFR 70.5(c)(7) to clarify that the application must include documentation demonstrating that the source has obtained all specific authorizations required under the applicable requirements relevant to any proposed advance approvals or AOSs, or a certification that the source has submitted a complete application for obtaining such authorizations. Based on our pilot experience, we expect that proposed advance approvals and certain AOSs will involve one or more of the following applicable requirements: minor NSR, major NSR, and section 112(g) of the Act. These applicable requirements all require permits or other authorizations prior to construction or modification of a source.²⁸ (In some cases, the overall

²⁸ Some State, local, and Tribal air control programs include “State-only” requirements (i.e., requirements not enforceable by EPA) that require source owners or operators to obtain authorization prior to construction. In instances where the permitting authority elects to include such requirements in the part 70 permit, there are benefits to addressing them as part of a comprehensive permit flexibility solution. These requirements should, however, be labeled as “State-”

approach might be to avoid triggering applicable requirements that require additional authorizations, such as by adopting a PAL or accepting a PTE limit.)

It is important to stress that an AOS merely incorporates authorizations given under applicable requirements and does not independently authorize changes that are subject to review and require specific approval. For this reason, we are proposing the above revision in the application requirements, along with a related revision to the AOS provisions of 40 CFR 70.6(a)(9), stating that the permitting authority cannot approve an AOS until all of the necessary authorizations required under the relevant applicable requirements have been obtained. It is possible to process the title V permit and, where needed, a corresponding NSR permit concurrently, but the title V permit approving an AOS cannot be issued before any necessary preconstruction approval has been obtained.

Some applications for AOSs and advance approvals may also contain information needed to establish one or more "approved replicable methodologies" (ARMs). In section VI.C.2.b of this preamble, we discuss ARMs and their incorporation into part 70 permits. An ARM is an objective protocol for determining values pertaining to compliance or applicability requirements, such as temperature or emissions. Approved replicable methodologies are permit terms that are consistent with and implement an applicable requirement or requirement of part 70. A source that wishes to have an ARM included in its permit must provide sufficient information in its application to define the replicable methodology, its intended function, the instructions for its use, and the type of data required for its implementation. See 40 CFR 70.5(c)(5)–(c)(7). See section VI.C.2.b for more information on ARMs.

Finally, we are proposing to revise 40 CFR 70.5(c)(8), which requires each part 70 permit application to include a compliance plan. The existing paragraph addresses applicable requirements with which the source is in compliance, applicable requirements that will become effective during the permit term (e.g., a newly promulgated emission standard), and applicable requirements with which the source is

not in compliance at the time of permit issuance. We are proposing to revise this section in two places to clarify that such plans must address AOSs when applications include them. This proposal would add language to clarify that, for applicable requirements associated with an AOS, the compliance plan must contain a statement that the source will meet such requirements upon implementation of the AOS or, if a requirement becomes applicable after implementation of the AOS, in a timely manner. We believe that this revision appropriately fills a gap in the existing language. See proposed 40 CFR 70.5(c)(8)(ii)(D) and (iii)(D).

We solicit comment on whether the proposed rule revisions noted above provide sufficient clarity as to how the application requirements of 40 CFR 70.5(c) are to be applied to sources that seek approval of AOSs and/or incorporation of advance approvals. We also seek comment on whether the proposed revisions are necessary or if additional revisions are needed to ensure that permit applications contain sufficient detail to identify all applicable requirements associated with an AOS and/or advance approval. If you believe that additional regulatory revisions are needed, please identify the proposed change and explain why it is needed.

C. What terms and conditions must be included in the title V permit for approved AOSs?

Existing 40 CFR 70.6 details the required content of a title V permit, including the requirements for reasonably anticipated operating scenarios. In this section of the preamble, we discuss how the existing permit content requirements of 40 CFR 70.6 apply to AOSs and how the rule revisions we are proposing are consistent with this intent.

To standardize the terminology in 40 CFR 70.6, we are proposing to use the term "alternative operating scenario" (or its acronym "AOS") throughout 40 CFR 70.6(a)(9) as we have done in the other sections of the rule. The proposed revisions to 40 CFR 70.6(a)(9) also clarify that the title V permit must contain terms and conditions to describe the AOSs, to assure compliance with the applicable requirements implicated by the AOSs, and to assure compliance with the requirements of part 70. Finally, as explained below, we are proposing to modify 40 CFR 70.6(a)(1) to clarify that ARMs are one type of operational requirement or limitation that assures compliance with applicable requirements. These items are discussed below.

As previously mentioned, no AOS is needed where the changes would occur under an advance approval contained in an authorizing permit whose terms are incorporated in the part 70 permit, as well as any other applicable requirements which would apply to the advance approved changes, and those terms are effective upon issuance of the part 70 permit. For example, our pilot experience suggests that no additional flexibility provisions may be needed in a title V permit beyond the incorporation of NSR permit terms establishing an advance approval under minor NSR and a PAL or PTE limit that prevents the applicability of major NSR.²⁹ On the other hand, AOSs can be particularly useful either where: (1) A new or existing unit with frequently changing operations would be subject to certain emissions standards in different ways depending on the type of materials used, rate of production, and type and/or amount of product produced; or (2) an existing unit would be subject to an applicable requirement associated with an advance approved change only upon implementation of the authorized change.

1. Terms and Conditions To Describe Approved AOSs

If the permitting authority approves an AOS, the permit must include a description of the baseline operating scenario for each included emissions unit, the authorized physical or operational changes included in each AOS, and the applicable requirements that apply under each scenario (including those requirements newly applying or not applying as a result of the authorized changes). Expectations for AOS descriptions in the permit are similar to those previously identified for AOS descriptions in complete applications. As mentioned previously, the type of detail in such descriptions and the need for one or more boundary conditions can vary depending on the nature of the change and the applicable requirements implicated by the changes. A permit with an AOS for a particular emissions unit normally would include a description of the unit operating in its baseline mode of operation. For each approved AOS, the physical and operational changes which have been authorized should then be identified relative to this baseline operation. In all cases, the description of each AOS must be adequate to link the triggered

only" consistent with 40 CFR 70.6(b)(2). Options for flexible permit conditions to address State-only applicable requirements potentially range widely, depending on the State's interpretation of its ability to authorize changes in advance under these requirements.

²⁹ As needed, additional terms would be added to assure compliance with applicable requirements beyond NSR that are implicated by the advance approved changes.

applicable requirements to the terms which assure compliance with them.

We are proposing revisions to 40 CFR 70.6(a)(9) to clarify what constitutes an acceptable description for an AOS (*see* proposed revision to 40 CFR 70.6(a)(9)(iii)). We are also proposing a revision to 40 CFR 70.6(a)(9)(iii) to make clear that the permitting authority cannot approve an AOS until all of the necessary authorizations relevant to the applicable requirements have been obtained, that is, until the source has been approved to proceed by the permitting authority where such prior authorization is required (e.g., approvals under major and minor NSR and section 112(g) of the Act).³⁰ Finally, as mentioned, where a source is unable to predict, at the time of permit issuance, which of several reasonably anticipated changes it actually will make, it can seek approval for a range of changes and applicable requirement combinations at a particular emissions unit by including multiple AOSs.

2. Terms and Conditions To Assure Compliance With Applicable Requirements

In this section, we discuss our proposal related to permit content to assure compliance with all applicable requirements.

a. Proposed Clarifications to the AOS Provisions

The provisions of 40 CFR 70.6(a)(9)(iii) require that, for each AOS for an emissions unit, the permit must contain terms and conditions to assure compliance with all the applicable requirements that apply to the emissions units operating in that AOS. This means that the permit must include, for each relevant emissions unit, the applicable emissions limits, compliance approaches, and monitoring, recordkeeping, reporting, and testing (MRRT) requirements as required by the applicable requirements as well as those required otherwise under 40 CFR 70.6(a)(3) (e.g., periodic monitoring) for the compliance approaches. In addition, the permit must incorporate all advance approvals, such as those authorized under NSR, as well as the description of changes authorized in each AOS as described above. For a permit containing more than one AOS for an emissions unit, the permit must contain a clear description of each one so that there is no confusion with respect to which AOS is implicated at any given time.

b. Proposed Revisions for ARMs

As stated, title V permits are required to assure compliance with all applicable requirements. Sometimes, changes occur at a source that may cause the need to recalculate/update a value used either in determining compliance of the source with an applicable requirement or in determining the applicability of a requirement. An advance approval or an AOS can incorporate flexibility in a permit, but the scope of changes that can be authorized in them can be severely limited with respect to a particular applicable requirement, if the changes require case-by-case review/approval procedures and possible permit revision in order to ensure ongoing compliance with all applicable requirements. To facilitate implementation of advance approvals and AOSs, and to encourage other permitting techniques that reduce in general the need for permit modifications (in a manner consistent with part 70), we are proposing the use of an ARM that has been approved by a permitting authority and incorporated into a title V permit.

In particular, we are proposing to define “approved replicable methodology” or “ARM” at 40 CFR 70.2 as title V permit terms that: (1) Specify a protocol which is consistent with and implements an applicable requirement or requirement of part 70, such that the protocol is based on sound scientific/mathematical principles and provides reproducible results using the same inputs; and (2) require the results of that protocol to be used for assuring compliance with such applicable requirement or requirement of part 70, including where an ARM is used for determining applicability of a specific requirement to a particular change. Within the scope of this definition, an ARM may be used to assure that a given requirement does not apply in a particular situation.

The terms of an ARM must specify when the ARM is to be used, the applicable methodology (e.g., equation or algorithm) and the purpose for which the output obtained upon the execution of the prescribed methodology will be used (e.g., to determine compliance with an applicable requirement or to modify the level of the parameters used to determine compliance in the future). All necessary terms and conditions must be included in the permit at the time the ARM is approved so that no permit revision will be required in the future to implement the ARM.

It is important to emphasize that an ARM, like any provision of a part 70 permit, cannot modify, supersede, or

replace an applicable requirement, including, but not limited to, any monitoring, recordkeeping, or reporting required under applicable requirements.³¹ Instead, ARMs are a strategic approach for incorporating into a title V permit relevant applicable requirements and the requirements of part 70. The ARM provides a method for obtaining and updating information consistent with the intent of applicable requirement(s) or requirement(s) of part 70 in such a manner so as to avoid the need to reopen or revise the permit to incorporate the updated information. As such, an ARM must work within and be consistent with the applicable part 70 rules that govern permit revisions.

The protocol to obtain information under an ARM must be objective and scientifically valid and reliable—such as an EPA test method or monitoring method (usually specified in the applicable requirement itself.) Note that an ARM also includes the instructions governing how the results of the protocol are to be used. For example, an ARM could specify that firebox temperature measurements taken during a performance test of a thermal oxidizer be used to revise a previously imposed minimum firebox operating temperature of the oxidizer.

We believe that ARMs are authorized under title V of the Act and its implementing regulations. Section 502 sets forth the minimum elements for a State operating permit program. Among other things, section 502 provides that for a State operating permit program to be approved, the permitting authority must have adequate authority to “issue permits and assure compliance by all sources required to have a permit * * * with each applicable standard, regulation or requirement” under the Act. *See* CAA section 502(b)(5)(A). Section 504(a) of the Act also requires that each title V permit contain “enforceable limitations and standards * * * and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.” The Act further provides that any State operating permit program must include “adequate, streamlined, and reasonable procedures * * * for expeditious review of permit actions.” *See* CAA section 502(b)(6).

³¹ Under the authority of 40 CFR 70.6(a)(3), however, the permit can also contain additional streamlined monitoring or gap-filling periodic monitoring as needed to assure compliance with applicable requirements. An ARM can operate on the information gathered under these obligations as well.

³⁰ *See* footnote 22.

The part 70 regulations implement these requirements. Section 70.4 sets forth the required elements for a State operating permit program. Such State programs must provide for the issuance of permits that contain appropriate terms and conditions that assure compliance with all applicable requirements and the requirements of part 70. See generally 40 CFR 70.4(3)(i)–(ii), (v). The threshold requirement that a part 70 permit contain terms and conditions that assure compliance with applicable requirements and the requirements of part 70 is also reflected in other parts of the part 70 regulations. See, e.g., 40 CFR 70.5(c)(4)–(5), 70.6(a)(1)(i), 70.6(a)(9)(iii). For example, 40 CFR 70.6(a)(1) provides that the permit include “those operational requirements and limitations that assure compliance with all applicable requirements.” Section 70.6(a)(1)(i) further provides that the permit shall identify the origin and authority for each term and condition. See 57 FR 32275 (“Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to the provisions of the Act is critical in defining the scope of any permit shield, since the permit shield, if granted, extends to the provisions of the Act included in the permit.”). An ARM, as proposed now, constitutes permit terms designed to assure compliance with applicable requirements or the requirements of part 70 and accordingly falls squarely within the authority of title V and its implementing regulations.

In our pilot experience, we found that some permitting authorities already use part 70 permit terms (similar to ARMs) that assure compliance with applicable requirements or the requirements of part 70, are self-implementing, and avoid the need for the source to seek multiple permit revisions. Based on our experience in the pilot program with such permitting techniques and in an effort to encourage efficient permitting techniques, we propose to define an ARM in the manner described above.

Under the proposed ARM definition, an ARM may be used to implement an applicable requirement. As an example of one type of ARM, consider a source subject to the MACT standard for Paper and Other Web Coating (40 CFR part 63, subpart JJJJ), which requires a 95 percent reduction in HAP emissions for existing sources. Like many emission standards, subpart JJJJ requires the source to assess ongoing compliance with the emissions limit by monitoring an operating parameter of the air pollution control device. Where a source uses a thermal oxidizer to

comply with the emissions limit, the rule requires the source to conduct a performance test to demonstrate initial compliance and to demonstrate ongoing compliance by continuously monitoring the combustion temperature in the combustion chamber of the oxidizer. To establish the minimum combustion temperature that will serve as the basis for future compliance determinations, subpart JJJJ requires the source to monitor the combustion temperature throughout the performance test, and to calculate the average combustion temperature achieved by the oxidizer during the test. Provided that the performance test demonstrated compliance with subpart JJJJ, the average combustion temperature determined during the test is established as the minimum temperature limit for the oxidizer in the permit. This value may change with each successive performance test that demonstrates compliance.³²

A source subject to subpart JJJJ proposes to use an ARM consistent with this standard to accommodate anticipated changes in the operating parameter limit resulting from future performance demonstrations without requiring a permit revision. The ARM would consist of the test methods and procedures specified under subpart JJJJ for demonstrating compliance and determining the minimum oxidizer temperature which indicates compliance with the standard (as described in the paragraph above). Upon approval of the ARM into the permit, the source would no longer be required to revise the permit each time it conducted a performance demonstration to place the most recent temperature value indicative of compliance on the face of the permit. Instead, the permit would require the source to: (1) Use the ARM (i.e., the test methods and procedures required under subpart JJJJ) to determine the temperature value indicative of compliance; (2) maintain records of this temperature; and (3) use this temperature for all compliance monitoring and reporting purposes dictated by subpart JJJJ, until and unless the permittee implements the ARM again. If the permitting authority for the source requires regular performance tests, the schedule for such tests also could be included in the ARM.

The MACT General Provisions (40 CFR part 63, subpart A) also apply in

³² Although subpart JJJJ requires only an initial performance test, many States require periodic performance tests to verify that the control device continues to achieve the emissions limit. Where this is the case, the operating limit typically is recalculated based on the temperature during each test.

part to sources subject to subpart JJJJ. The General Provisions include the following provisions related to conducting performance tests: Requirements for notifications; quality assurance (including submission of a site-specific test plan as requested by the permitting authority); the test method audit program; conduct of tests; and data analysis, recordkeeping, and reporting. The ARM does not abrogate such procedural requirements, it simply incorporates these requirements in the permit.

A second type of ARM may be used in a part 70 permit to ensure that a legal limit requested voluntarily by the source effectively constrains the source's PTE below a certain threshold so as to avoid the applicability of certain requirements. By complying with such PTE limits, sources demonstrate on an ongoing basis that they are not subject to a requirement that would otherwise be triggered at a particular emissions threshold. Some PTE limits are applicable requirements (e.g., if imposed by a SIP program or as a condition of an NSR permit). In addition, part 70 operating permits can be used as a legal mechanism for establishing EPA and citizens' authority to enforce terms and conditions limiting a source's PTE. See 40 CFR 70.6(b)(1). Permitting authorities have some discretion in fashioning such terms and conditions. We believe that the ARM concept could be used to establish effective PTE limits in agreement with 40 CFR 70.6(b)(1).³³

As an example of how the ARM concept can be used to assure compliance with a PTE limit, consider a source in the process of renewing its title V permit that proposes to take a PTE limit of 99 tpy on its VOC emissions to avoid being classified as a major VOC source. The PTE limit, once approved and incorporated into the title V permit, has the effect of exempting the source from major NSR requirements that only apply to existing major VOC emitters. To assure compliance with the 99 tpy PTE limit, the source proposes a quantification methodology to the permitting authority by which the source would determine total VOC emissions on an ongoing basis.³⁴ In this

³³ We have proposed in the definition of ARM that the otherwise qualifying replicable protocol be consistent with and implement an applicable requirement or requirement of part 70 (emphasis added). Limits on PTE may be established pursuant to part 70, and such a PTE limit would be a requirement of part 70 and thus could be in part implemented through an ARM.

³⁴ In the above PTE example, assume that the emissions determinations were based on emissions factors derived from a stack test. If there is a possibility that a subsequent stack test may be

instance, the source will determine VOC emissions with an equation that sums all the individual VOC emissions from each emissions unit. Provided that this methodology relies on objective, repeatable protocols (i.e., the method of calculating the individual units' VOC emissions is clear) it can become an ARM when approved by the permitting authority and included in the title V permit. The ARM would include requirements governing when the procedures were to be used and how the values to be input into the equation would be determined.

We found permit terms, similar to ARMs, to be useful in maintaining the effect of the advance approvals found in the flexible permit pilots. Two of the pilot permits contained replicable testing procedures. These procedures, once implemented, determined the control device operating parameter values that the source must monitor to demonstrate compliance with capture and destruction efficiency requirements (i.e., the applicable requirement).

Without the replicable testing procedures in the permit, those values would have been included on the face of the permit, and the source would have had to seek a permit revision each time it repeated the testing procedures and the operating parameter values changed.³⁵ Another pilot permit specified the process by which an emissions factor could be updated and used to determine whether the source's emissions remained under a PTE cap. By including this process (replicable testing and/or emissions factor updating procedures) in the permit instead of specific operating values and emissions factors, the source could update those values and indicate compliance based on the latest results consistent with the replicable testing procedures in the title V permit, and forego a permit revision each time the values change.

In addition to proposing a definition of an ARM, we also propose modifying 40 CFR 70.6(a)(1) to include a reference to ARMs, because ARMs are an example

performed, which would require revision of those emissions factors in the near future, the source or permitting authority may consider including in the permit an ARM. The ARM could direct the source to use emissions factors derived from the most recent stack test, rather than listing specific factors in the PTE equation contained in the permit, eliminating the need for a permit revision once new factors are established.

³⁵ Although an ARM can reduce the number of permit revisions a source must make, it cannot modify an applicable requirement. For example, there are some instances where the applicable requirement requires a notice to the permitting authority, such as where the requirement calls for notice of a performance test or the submission of certain performance test results. An ARM does not abrogate these requirements.

of permit terms that assure compliance with applicable requirements. Although we do not believe that the proposed regulatory change to 40 CFR 70.6(a)(1) is needed, given that all permits must include terms that assure compliance with applicable requirements and the requirements of part 70, we are proposing the change to promote clarity. We recognize that we could modify other provisions of part 70, such as 40 CFR 70.6(a)(9),³⁶ to include a reference to ARMs, but given the structure and content of the existing regulations, we do not believe such additional changes are needed. We solicit comment, however, on whether additional regulatory changes would be useful to encourage the use of this efficient permitting technique.

3. Terms and Conditions To Assure Compliance With Other Part 70 Requirements

In addition to the terms and conditions to assure compliance with all applicable requirements, the permit must contain terms and conditions that assure compliance with the requirements of part 70. Section 70.6(a)(9)(i) currently requires "the source, contemporaneously with making a change from one [AOS] to another, to record in a log at the permitted facility a record of the [AOS] under which it is operating." We are proposing to clarify this provision to identify more clearly the information that must be included in the log and when the log must be updated.

Overall, we expect that the log will be clear and complete in its description of which AOS and associated permit terms and conditions are being implemented. Specifically, we propose that the source be required to maintain an on-site log that includes, for each time an AOS is implemented at the source: the operational or physical change which causes the shift to the AOS, the emissions unit included under the scenario, a reference to the applicable requirement(s) (including those newly applicable to the emissions unit as a result of the change), a reference to the applicable permit terms and conditions which apply to the AOS and are implemented by the source, and the dates when the source operated under the AOS (see proposed 40 CFR 70.6(a)(9)(i)).^{37, 38} A source can cross-

reference the permit in providing the information required for the log, but the cross-reference must be clear and specific and all of the information required for the log must be identified, including, but not limited to, the identity of the AOS implemented and if alternative terms and conditions are provided for such AOS, which terms and conditions were actually implemented by the source.

We are seeking comment on whether our proposed revisions to 40 CFR 70.6(a)(9)(i) appropriately clarify the required content of the on-site log of AOSs operated at the source. We also seek comment on whether we have achieved the proper balance between the need for information and the need to minimize administrative burden in proposing that log entries be required only when a source adopts a different AOS. Is the proposed log content adequate to determine which AOS is being implemented by the source?

Existing 40 CFR 70.6(a)(9)(ii) states that the title V permit may extend the permit shield described in 40 CFR 70.6(f) to all terms and conditions under each AOS. We are not proposing to change this paragraph, other than to adopt the term "AOS" for consistency. Thus, the permit shield, where provided for by the permitting authority, may be extended to the terms and conditions of ARMs and AOSs, provided they have been the subject of notice and comment. See 57 FR at 32277 (July 21, 1992); see also 40 CFR 70.7(e)(2)(vi). The contents of the on-site implementation log, such as its description of requirements which apply to a particular AOS, are not permit provisions for purposes of the permit shield. Thus, a source will not be deemed to be in compliance with applicable requirements of the Act simply because it is in compliance with the description of applicable requirements contained in the log (if the description is inaccurate). Similarly, a source owner or operator who

log. These data can be combined with that which would be required under the proposed part 70 revisions. For example, the Pharmaceuticals Production MACT standard (40 CFR part 63, subpart GGG) requires the source to log considerably more information about its "operating scenario." See 40 CFR 63.1259(b)(8) and the definition of "operating scenario" at 40 CFR 63.1251.

³⁸ A source, however, would not need to log a change to an emissions unit unless an AOS is implicated by the change, or a source stops operating under an AOS and returns to baseline operating conditions as a result of the change. In particular, no log entry is needed for a source making a change where the change has been advance approved under minor NSR, the title V permit contains the advance approval, and these terms are in effect upon issuance of the title V permit (i.e., no AOS is involved).

³⁶ In pertinent part, 40 CFR 70.6(a)(9) provides that for an AOS, the part 70 permit must contain appropriate terms and conditions to ensure that "all applicable requirement and the requirements of this part" are met. An ARM constitutes an example of such permit terms.

³⁷ Certain applicable requirements require that additional information be included in an on-site

incorrectly applies the procedures and criteria for an ARM contained in the permit will be considered not to be in compliance with the terms of the permit (and therefore not in compliance with the Act).

Finally, we would like to clarify our expectations for how monitoring relative to AOS implementation is to be included in the semi-annual monitoring reports required by 40 CFR

70.6(a)(3)(iii)(A). In general, the semi-annual reports must identify the AOS(s) implemented during the 6-month period and include monitoring information relating to such AOS(s). Such monitoring information provides permitting authorities important information on source operations. The information also helps inform the permitting authority as to the frequency and duration of the AOSs actually implemented.

In addition, the semi-annual monitoring reports must identify any ARMs implemented in the 6-month period. For ARMs that generate values related to parametric monitoring (e.g., an ARM used to determine the new value of a control device operating limit after a performance test, or an ARM used to determine compliance with a PTE limit), the source must also include the results of the ARM used during the 6-month period in the semi-annual report. The report will, therefore, summarize the monitoring data referenced to the emissions unit, emissions limit, and ARM output.

D. What are some examples of how AOSs and advance approvals can be used to provide operational flexibility?

In this section, we present two examples to illustrate how to apply the requirements of 40 CFR 70.5(c) and 70.6(a)(9) to AOSs. The first example is for an AOS that involves the use of an existing boiler with dual fuel capability. The second example uses a combination of advance approvals and AOSs to add solvent storage tanks over the term of a source's title V permit.

Example 1: Boiler With Dual Fuel capability

This is a simple example of an AOS, and the application and permitting requirements are quite straightforward. The relevant emissions unit is an existing boiler that is authorized for and capable of burning either distillate fuel oil or natural gas. The boiler is part of a major stationary source subject to the title V permitting requirements. The boiler is subject to a pre-existing minor NSR permit which authorized its construction and limited its subsequent total emissions, and to different SIP

emissions limits (and associated MRRT requirements) depending on which fuel is in use. The minor NSR permit remains in effect. The source reasonably anticipates that it may wish to switch fuels during the term of its title V permit, and proposes to the permitting authority to designate combustion of natural gas as the baseline operating scenario and address the combustion of distillate fuel oil as an AOS.

In this example, the minor NSR permit terms (previously used to authorize construction of the boiler), the applicable SIP emissions limits, and the associated MRRT requirements are the only applicable requirements. The boiler is not subject to any of the NSPS for "steam generating units" (i.e., boilers) because of its size and date of construction. That is, it is below the size cutoff for the NSPS that were in effect when it was built (40 CFR part 60, subparts D, Da, and Db), and it was built prior to the cutoff date for the NSPS that does cover boilers of its size (subpart Dc). By virtue of its construction date, size, and fuel, the boiler is classified as an existing large liquid fuel unit under the MACT standard for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR part 63, subpart DDDDD). As such, the only applicable requirement under the MACT standard is to submit an "initial notification" to the permitting authority, which the source has already done.

When distillate oil is fired, the boiler is subject to limits of 10 percent opacity and 1 percent sulfur in the fuel. No such restrictions apply when natural gas is being fired. Different SIP emissions limits also apply to emissions of particulate matter, nitrogen oxides, and carbon monoxide for each fuel. This existing unit was constructed under a minor NSR permit, but switching between the fuels will not trigger minor or major NSR, an NSPS, or the MACT standard because the boiler was designed to accommodate both fuels, and it has historically been authorized to use both fuels in its State operating permits. Thus, the anticipated fuel switches are operational changes that trigger only different SIP requirements.

The design of the burners in the boiler, coupled with proper operation and maintenance, is sufficient to meet the SIP limits for both fuels for particulate matter, nitrogen oxides, and carbon monoxide, as well as opacity when distillate oil is fired (based on performance tests). To meet the percent fuel sulfur requirement for distillate oil firing, the source will purchase fuel at or below 1 percent sulfur. In addition, under the terms of its existing (and still effective) minor NSR permit, the source

will have to provide periodic analyses of the percent sulfur in the fuel, as well as whenever the source changes fuel suppliers.

To establish the AOS, the permit would identify and describe the AOS, in this case combustion of distillate oil, and identify all applicable requirements which apply when distillate oil is combusted. The permit must also include terms and conditions that assure compliance with all applicable requirements (as required under proposed 40 CFR 70.6(a)(9)(iii)), and include a requirement for the source to keep a contemporaneous log that records the information required by proposed 40 CFR 70.6(a)(9)(i), including, but not limited to: the affected emissions unit (i.e., the boiler), a reference to the applicable requirements applying to the boiler when burning distillate oil, a reference to the applicable permit terms which assure compliance with these requirements, and the dates the source began and ceased combustion of distillate oil. Since the MRRT applicable requirements detail all the relevant compliance procedures, there is no need for additional permit information to be contained or cross-referenced into the log for this purpose.

The title V permit for the source also must require the source to submit a semi-annual monitoring report. See 40 CFR 70.6(a)(3)(iii)(A). In this example, once the facility implements the AOS (i.e., begins combusting distillate fuel oil), the next monitoring report would identify, for the relevant time periods, the AOS implemented and provide monitoring information relative to that AOS. The report would also contain monitoring information for the baseline natural gas combustion operations, if the source operated both in the baseline mode and under the AOS during the 6-month reporting period.

Example 2: Future Addition of Volatile Organic Liquid (VOL) Storage Tanks

A synthetic organic chemical manufacturing facility located in an ozone attainment area seeks a title V permit renewal and intends to add VOL storage tanks to an existing tank farm and store various VOLs at different times in the new and existing tanks over the term of its renewed permit. The source will have to obtain all necessary advance approvals in a minor NSR permit for construction of the new tanks. In addition, the source will apply for AOSs in its title V permit to address future operating scenarios involving storing different VOLs at different times in the new tanks and also its existing tanks (since these scenarios will

implicate different applicable requirements)

Advance Approvals

In this example, the source applied for advance approvals under NSR to authorize the construction of up to 10 new VOL storage tanks of up to 30,000 gallons in capacity. Because the source operates under a VOC PAL, the new tanks will not trigger major NSR for VOC. In its minor NSR permit application, the source proposed to the permitting authority that this emissions cap, by limiting aggregate VOC emissions (including those from the new tanks), would also satisfy the requirements of minor NSR related to the protection of the NAAQS and PSD increments.³⁹ Although the source does not know precisely the sizes or number of the new tanks or the materials to be stored in them, it acknowledged in its minor NSR permit application that the requirements of the NSPS for Volatile Organic Liquid Storage Vessels (40 CFR

part 60, subpart Kb) would apply to each new tank. In addition, the source stated that it would use a submerged fill pipe for tanks with capacity of 2,000 gallons or more which is the SIP requirement for such tanks when they otherwise are not required to be controlled to comply with subpart Kb.

The source did not address any other SIP requirements for VOL storage tanks in its application because these requirements do not apply to tanks with capacity below 40,000 gallons, and the source is not seeking approval for any new tanks over 30,000 gallons in capacity. In addition, although it is subject to the MACT standard for the Synthetic Organic Chemical Manufacturing Industry (typically referred to as the "Hazardous Organic NESHAP" or the "HON," 40 CFR part 63, subpart G), the source did not address the requirements of this standard in its minor NSR application because the State in which this example source is located implements MACT

standards through its title V permit program (see below) rather than in the context of its minor NSR program.⁴⁰

The control requirements of subpart Kb vary with the size of the storage tank and the maximum true vapor pressure of the stored liquid. An advance approval must describe the changes that the source may implement, which in this example consist of the reasonably anticipated combinations of new tank size and stored liquid vapor pressure, along with the requirements (i.e., subpart Kb and SIP provisions) that would apply for each. One way to do so would be to use a table such as Table VI-1 below, which uses metric units to match the metric units used in subpart Kb. Note that because the source in this example sought advance approval only for new tanks up to 30,000 gallons (114 cubic meters (m³)) in capacity, the table addresses only tanks up to this size even though subpart Kb contains provisions specific to larger tanks.

TABLE VI-1.—ADVANCE APPROVALS FOR NEW TANKS^a

Tank size, V (m ³)	Stored liquid maximum true vapor pressure, VP (kPa)	Emissions limitation from 40 CFR part 60, subpart Kb	MRRT citations from 40 CFR part 60, subpart Kb
V < 75	Any	Not applicable	Not applicable.
75 ≤ V ≤ 114	VP < 15.0	Not applicable	Not applicable.
75 ≤ V ≤ 114	15.0 ≤ VP < 27.6	None	§§ 60.116b(a)-(e).
75 ≤ V ≤ 114	27.6 ≤ VP < 76.6	§ 60.112b(a)(1) Fixed roof w/internal floating roof; or § 60.112b(a)(2) External floating roof; or § 60.112b(a)(3) Closed vent system and control device ≥ 95% efficient.	§ 60.113b(a), § 60.115b(a), § 60.116b(a)-(c), (e). § 60.113b(b), § 60.115b(b), § 60.116b(a)-(c), (e). § 60.113b(c) or (d), § 60.115b(c) or (d), §§ 60.116b(a), (b), (e).
75 ≤ V ≤ 114	76.6 ≤ VP	§ 60.112b(b) Closed vent system and control device ≥ 95% efficient.	§ 60.113b(c) or (d), § 60.115b(c) or (d), §§ 60.116b(a), (b), (e).

^a The source is authorized to add up to 10 new tanks, each of which is covered by the scope of Table IV-1. A permanent submerged fill pipe is required for any of the 10 advance approved tanks with capacity ≥ 7.6 m³ that is not controlled with an internal floating roof, external floating roof, or closed vent system and 95%-efficient control device.

In this example, the permitting authority granted advance approval in a minor NSR permit for the source to construct tanks meeting each of the conditions described in Table VI-1. The permitting authority determined that no further restrictions on the proposed tanks other than SIP and subpart Kb compliance and the major NSR PAL for VOC emissions would be necessary in the minor NSR permit, because the maximum number of proposed new tanks could be accommodated within the source's VOC PAL (due to pollution prevention (P2) initiatives undertaken by the source) and would not cause

concern with NAAQS or PSD increment protection or Class I area impacts. In this case, the permitting authority chose to incorporate Table VI-1 directly into the minor NSR permit to identify the requirements which apply to the new tanks, regardless of size, type, and/or number.

Title V Renewal With AOSs

The source's title V renewal application would identify both the existing emissions units (i.e., the units currently comprising the tank farm) and the new tanks authorized under the minor NSR permit advance approval,

and would contain any AOSs that the source wants to propose. The title V application must identify all applicable requirements that are implicated by each proposed AOS.

The source has opted to make the universe of requirements potentially applicable to the advance approved new tanks more manageable by accepting a boundary condition, specifically a maximum tank volume of 30,000 gallons (114 m³). This condition does not restrict the source's flexibility, since only tanks at or below the 30,000 gallon threshold are anticipated to be constructed, but it does have the effect

³⁹ Under the provisions of parts 51 and 52, a major NSR PAL does not inherently affect the applicability of minor NSR. Some State minor NSR rules may vary on this point, but for purposes of

this example we assume that minor NSR continues to apply beneath the major NSR PAL.

⁴⁰ The acronym "NESHAP" stands for National Emission Standards for Hazardous Air Pollutants.

The NESHAP promulgated in 40 CFR part 63 are typically referred to as MACT standards.

of precluding the applicability of the NSPS requirements that would apply to tanks above that size.⁴¹ The source also has committed to store only materials with maximum true vapor pressure of less than 15 pounds per square inch (psi) (103 kilopascals (kPa)). This ceiling on vapor pressure does not affect the applicability of control requirements, but is necessary for calculating maximum theoretical emissions from the new tanks and assessing the ability of existing add-on control devices to accommodate any increased emissions. The existing tanks are all currently within these boundary conditions. The source wishes to retain the option to store materials that contain HAPs in all of the tanks, which could implicate the requirements for storage vessels in the HON. In this example, the facility was originally constructed in the late 1980's, so the existing tanks are subject to the requirements of subpart Kb, and the source is considered an existing "affected source" for purposes of the HON. The applicable requirements to be listed in the renewal application for the new and existing tanks include the SIP emissions limitations, the requirements of subpart Kb, the requirements of the minor NSR permit (which are identical to the requirements of the SIP and subpart Kb as set out in the advance approvals in Table VI-1), and the requirements of the HON.

The source has conducted a streamlining analysis of applicable requirements related to the emissions limitations for each tank.⁴² The source provided supporting documentation in its permit application for this

streamlining analysis, and the permitting authority reviewed and approved it. The analysis shows that for new and existing tanks that are storing materials that do not contain HAPs, compliance with the requirements of subpart Kb also will satisfy the control requirements of the SIP. For tanks not storing HAPs, the SIP requirements are the most stringent applicable requirements only when subpart Kb does not apply (i.e., when the tank size and/or vapor pressure are below the respective applicability limits for subpart Kb).

For tanks that are storing materials that contain HAPs and are subject to the HON (i.e., capacity $\geq 38 \text{ m}^3$), the HON specifies that subpart Kb does not apply.⁴³ Tanks storing HAPs that are below the size cutoff for HON applicability are also below the applicability cutoff for subpart Kb (which is 75 m^3); thus, at this facility subpart Kb does not apply to new or existing tanks that store materials containing HAPs. The streamlining analysis provided by the source and approved by the permitting authority shows that compliance with the requirements of the HON will satisfy the control requirements of the SIP for both the new and existing tanks that store HAP-containing materials. The SIP requirements are most stringent only for HAP-containing tanks that are below the size and/or vapor pressure cutoffs for control under the HON.

To maintain the flexibility to change the material stored in each tank (an operational change), the source requested AOSs in its title V permit.

(The source does not expect to modify the volume of any existing storage tanks, or of any new tanks after they are initially constructed, and therefore did not request AOSs to address such physical changes.) Each set of operating conditions that implicates a different set of applicable requirements would require an AOS. The necessary AOSs vary depending upon the capacity of a given tank. For example, no AOSs are needed for a new or existing storage tank that has a capacity of less than 7.6 m^3 because no requirements apply regardless of the characteristic of the material that is stored in the tank (tanks of this size are below the applicability cut-offs for the SIP, subpart Kb, and the HON). As a result, a new or existing tank of this size has only a baseline operating scenario, and no AOSs are necessary. Similarly, no AOSs are needed for tanks that are between 7.6 m^3 and 38 m^3 because only the SIP requirements apply to these tanks regardless of the liquid that is stored. A tank that is between 38 m^3 and 75 m^3 needs a baseline operating scenario and one AOS to enable switching between storing a material that contains HAP and one that does not. In both cases, the SIP control requirements apply, but when HAPs are stored the source must also maintain the records required under the HON. That is, when HAPs are stored, an additional applicable requirement is triggered for the tank.

Several operating scenarios are needed for both new and existing tanks between 75 m^3 and 114 m^3 . The possible scenarios for these tanks are outlined in Table VI-2.

TABLE VI-2.—AUTHORIZED OPERATING SCENARIOS FOR NEW AND EXISTING STORAGE TANKS WITH CAPACITY BETWEEN 75 M^3 AND 114 M^3

Operating scenario No.	Tank size, V (m^3)	Are materials with HAPs stored?	VP or VP_H , as applicable (kPa) ^a	Most stringent applicable control requirements
1	$75 \leq V \leq 114$	No	$\text{VP} < 15.0$	SIP.
2	$75 \leq V \leq 114$	No	$15.0 \leq \text{VP} < 27.6$	SIP.
3	$75 \leq V \leq 114$	No	$27.6 \leq \text{VP} < 76.6$	NSPS.
4	$75 \leq V \leq 114$	No	$76.6 \leq \text{VP}$	NSPS.
5	$75 \leq V \leq 114$	Yes	$\text{VP}_H < 13.1$	SIP.
6	$75 \leq V \leq 114$	Yes	$13.1 \leq \text{VP}_H < 76.6$	HON.
7	$75 \leq V \leq 114$	Yes	$76.6 \leq \text{VP}_H$	HON.

^a The following symbols are used in this column:
 VP = stored liquid maximum true vapor pressure.
 VP_H = stored total HAP maximum true vapor pressure.

As seen in Table VI-2, seven operating scenarios are approved for new and existing storage tanks in this

size range. The source included this table in its title V permit application, along with the details about the

applicable requirements (including control and MRRT requirements) for each operating scenario. For each

⁴¹ The limit on tank size applies only to the advance approved tanks. The source retains the ability to construct tanks larger than 30,000 gallons, but would have to go through the normal

preconstruction permitting to construct a larger tank.

⁴² See section VI.A of this preamble and footnote 26 for more on the streamlining of applicable requirements in a title V permit.

⁴³ The HON applies to specified organic HAPs that are a subset of the total HAP list. For this example, we use "HAP" to refer to those HAPs covered by the HON.

existing tank in this size range, the source specified the baseline operating scenario and designated the others as AOSs. For any new tanks in this size range, a baseline operating scenario from the scenarios authorized in Table VI-2 either was identified at the time of minor NSR permitting (if known), or will be identified at the time of construction and operation. Table VI-2 is, therefore, a convenient means to describe efficiently the individual operating scenarios that are approved with respect to the new and existing tanks at the source.

The title V permit containing the approved streamlined limits must also identify the subsumed applicable requirements. The permit also must contain terms requiring the source to keep an on-site log recording the use of authorized AOSs. The log entries would include, upon shifting to or from the storage of HAP materials or materials of different vapor pressure which implicate different requirements, the following: the size of the tank involved (new or existing); the maximum true vapor pressure of the stored material (if no HAPs are stored) or the total HAP maximum true vapor pressure (if the stored material contains HAPs); the control option employed; the applicable requirements that apply (including emissions limitations and MRRT requirements); and the date that the relevant storage commenced.

After an existing tank's initial shift from its baseline scenario, the on-site log would identify at all times which AOS was in effect for that tank. For a new tank, the on-site log would be used to record the initial baseline operating scenario and any AOSs into which the tank subsequently shifted. For example, if the source switched from storing a HAP-containing material to material with no HAPs, the source would enter that switch into the on-site log, giving the date of the switch, identifying the new AOS, and providing information about which applicable requirements (permit terms and conditions) were implicated for that AOS.

E. What is the process for adding or revising advance approvals, AOSs, and ARMs in issued permits?

An advance approval, AOS, or ARM may be added to a title V permit through permit issuance or renewal or through the permit modification process. When an existing permit is to be modified, the appropriate modification track (significant or minor) depends on the nature of the proposed advance approval, AOS, or ARM or the proposed revisions to them and whether it would qualify as a minor permit modification.

See 40 CFR 70.7(e)(2)(i). Note also that the permit shield, where available, can be extended to advance approvals, AOSs, and ARMs added through a significant permit modification, but not to those added through minor permit modification procedures (per existing 40 CFR 70.7(e)(2)(vi)). See section VI.C.3 above for more on AOSs and ARMs and the permit shield.

F. How do the proposed AOS provisions differ between parts 70 and 71?

Part 70 contains only the requirements for State operating permit programs and is not divided into subparts. Part 71 contains two subparts. Subpart A of part 71 contains the general Federal operating permit program, while subpart B contains provisions for a limited, Federal title V permit program to establish alternative emissions limitations for early reductions sources that have demonstrated qualifying reductions of HAP under section 112(i)(5) of the Act. Thus, subpart A of part 71 is analogous to the entire part 70.

A general difference between the part 71 and part 70 operating permit programs is the identity of the permitting authority. Under part 70, non-Federal agencies are the permitting authorities. A part 71 permit may be issued by EPA, where there is not an approved State program or where a State has failed to revise a permit in response to an objection from the Administrator, or it may be issued by a permitting authority that has been delegated authority to issue part 71 permits on behalf of EPA. Currently, part 71 permits are generally issued for sources operating in Indian country.

For the most part, the proposed revisions to the part 71 operating permit program mirror exactly the proposed revisions to part 70. That is, the proposed language is identical, and the sections of the rule that would be revised differ only by being in part 71 instead of part 70. For example, we are proposing the same language on AOS permit content in 40 CFR 70.6(a)(9) and 71.6(a)(9). However, there is one place where the structure of the part 71 operating permit program does not parallel that of part 70, and therefore the revisions proposed are different.

Specifically, 40 CFR 70.4(d)(3)(xi) is one of the places in part 70 that we have proposed to substitute the term "AOSs" for purposes of consistent terminology. There is no analogous section in part 71, so we are not proposing an analogous revision.

We solicit comment on these topics and all aspects of this proposal regarding part 70. We also note that if

a commenter believes that additional or different regulatory revisions are needed, they should identify the specific revisions and the basis for these revisions.

VII. What changes are we proposing in parts 51 and 52?

We propose to modify the major NSR regulations in a limited way. Specifically, we propose to allow a number of emission activities to be treated as a single emissions unit (i.e., a "Green Group"). Emissions from each of these activities would be routed to a common emission control device meeting BACT/LAER, and future emissions and changes within the Green Group would be approved over a 10-year period in a major NSR permit. In addition, we are proposing that Green Groups not be subject to the provisions of 40 CFR 52.21(j)(4) and 51.166(j)(4) requiring reevaluation of BACT for phased construction projects or of 40 CFR 52.21(r)(2) requiring continuous construction to commence within 18 months. These provisions would remain in effect for permits issued to emissions units other than Green Groups. We are proposing these changes because we believe the anticipated benefits of permitting Green Groups, similar to those studied in pilot projects and discussed in section IV.A, warrant allowing the sources more time to construct before the permit expires.

The approach we are proposing represents an extension of our December 2002 NSR Improvement regulations and reflects strategies that we believe ensure environmental protection while providing additional operational flexibility to sources. In particular, we intend Green Groups to complement the use of plantwide emissions caps (e.g., PALs) by providing a flexible permitting option for a section of a plant.⁴⁴ Like PALs, we propose that Green Groups would be a mandatory minimum element of a State NSR program under which the permitting authorities retain discretion as to when to approve individual Green Groups requested by

⁴⁴ The companies in two of our pilots conveyed a clear desire to pursue an approach similar to the Green Group options described in this proposal. One of these facilities is a synthetic minor source of VOC emissions for purposes of PSD applicability, and is therefore not subject to major NSR. The source did, however, agree to meet a best technology requirement under the State's minor NSR program in order to authorize a range of changes with VOC emissions conveyed to a highly efficient carbon adsorption system. The second facility went through major NSR to obtain authorization for a wide spectrum of related changes anticipated to occur in a complex of buildings all ducted to a common state-of-the-art control technology.

sources.⁴⁵ We also take comment on whether instead the Green Groups should be a voluntary rather than a mandatory program element for States.

Sources that need to alter their operations rapidly in response to market pressures (including expanding production) and that have controlled portions of their plants to BACT/LAER (either voluntarily or as part of their efforts to meet applicable MACT or other requirements) are good candidates for the Green Group provisions. Such well-controlled sources may have limited growth potential under a PAL, especially compared to sources with less well-controlled baseline emissions. Other candidates for Green Groups are sources in which only a portion of the facility accounts for all or nearly all anticipated changes or large, complex plants with many diverse operations producing a variety of products. This option for Green Groups would help provide effective alternatives for the diverse universe of sources potentially subject to major NSR.

The Green Group provisions proposed encourage a wide spectrum of sources to construct specified types of changes for a 10-year period with greater certainty and flexibility in exchange for implementing BACT/LAER, regardless of whether or to what extent the source may have been subject to the current major NSR regulations. That is, the Green Group provisions, if finalized, would provide an alternative means to comply with major NSR and not require an evaluation of whether major NSR would otherwise apply. For example, a source might propose a Green Group that would result in a net decrease in actual emissions (i.e., application of controls to meet BACT/LAER, as applicable, reduces actual emissions by an amount greater than the increased emissions associated with the changes authorized for the Green Group). Under these circumstances, the source voluntarily subjects to major NSR the changes and existing operations included within the Green Group, presumably to obtain greater flexibility and certainty in return for implementing a BACT/LAER level of control.

A. What are the benefits of Green Groups?

For several reasons, we believe that the environment and the public will benefit from Green Groups. First, we

⁴⁵ The major NSR rules refer to the "reviewing authority," while part 70 refers to the "permitting authority." For purposes of consistency with the other sections of this preamble, we use the term "permitting authority" in this section. In these discussions, this term is intended to have the same meaning as "reviewing authority."

believe that substantial environmental benefits will occur, because a Green Group requires all included emissions activities to be controlled to the level of BACT or LAER. The BACT or LAER would apply to existing emissions activities (which otherwise would remain uncontrolled or be subject to less stringent control requirements), as well as to emissions activities that are modified or added pursuant to the Green Group authorization. In the absence of a Green Group, existing emissions activities would not be subject to BACT or LAER controls until such time as they were modified. Such modifications might not ever occur, or might occur far into the future. Even where a modification did occur, evaluated alone, many modifications would likely not be subject to major NSR. Some new emissions activities might also not be subject to major NSR because their emissions are below applicability thresholds or because they "net out" of review. For example, a VOC source might make one or more unrelated modifications, each of which are less than significant (i.e., would result in increases in VOC emissions of 39 tpy or less). These modifications would ordinarily not be covered by NSR; however, when grouped together as a Green Group, they would undergo NSR and be subject to BACT/LAER.

Even when individual changes are proved to be subject to major NSR, the resulting BACT may in some cases be less stringent than that required for a Green Group. Considering the entire Green Group, including all the authorized future changes, in a single major NSR action will drive a BACT analysis toward the maximum level of control due to the economies of scale that occur in calculating the cost effectiveness of controls. We believe these environmental benefits will more than offset the possibility that a future BACT or LAER determination for new approved expansion might be marginally more stringent than the BACT/LAER determination at the time of the Green Group designation.

Moreover, we expect benefits to occur from the better and more frequent type and amount of monitoring that will be required for Green Groups. Currently, for a typical emissions unit subject to major NSR, the permitting authorities decide on a case-by-case basis the types of MRRT appropriate for the permitted emissions activities, consistent with the underlying applicable NSR requirements. We are proposing that a Green Group be subject to MRRT requirements that are patterned on the existing requirements for PALs. In addition, there are proposed safeguards

to ensure that the air pollution control device continues to function as intended throughout the Green Group designation period. These proposed requirements will significantly improve the monitoring data available to the source, the permitting authority, and the public, and thus, will better ensure ongoing compliance.

Green Groups will also promote greater administrative efficiency for permitting authorities and sources, because once a group of activities qualifies, it will have increased flexibility to make approved changes rapidly in response to market demands without needing to undergo additional preconstruction permitting review. In addition, permitting authorities benefit from increased administrative efficiency, because the Green Group eliminates iterations of permitting processes that produce little or no environmental benefit.

B. What is a Green Group?

1. Defining the Scope of a Green Group

This notice proposes to define a Green Group as one emissions unit that is composed of designated emissions activities ducted to one common air pollution control device^{46, 47, 48} that is determined for this group to meet BACT or LAER, as applicable. A Green Group is a framework established under major NSR for the advance approval of anticipated changes within the group. These changes can occur over a 10-year phase, as described in the permit. Separate Green Groups must be established for emissions activities that are ducted to separate air pollution control devices.

⁴⁶ The source may maintain a back-up control device; however, all emissions from the Green Group must be directed to a dedicated, common pollution control device.

⁴⁷ Emissions activities are the component equipment that makes up the Green Group. For example, a Green Group could include multiple coating lines, and each individual coating line could be considered an emissions activity within the Green Group. Note that some or even several of these might be individually regulated under one or more other applicable requirements but are combined into one emissions unit for purposes of NSR.

⁴⁸ In order to qualify for the Green Group designation, all of the emissions activities that are identified as part of the Green Group must be conveyed to a common air pollution control device to meet the BACT or LAER limit, as appropriate, depending on whether the area is designated attainment or non-attainment for the pollutant of concern. Although this Green Group proposal requires that the emissions from the Green Group be ducted to a common air pollution control device, consistent with existing EPA policy, the source can use other control measures in addition to the common control device to meet BACT or LAER. Such additional measures can include P2, work practices, or operational standards.

In addition to current, designated emissions activities, a Green Group may include future changes (e.g., reconfiguration and/or expansion) to these existing activities and/or the addition of new emissions activities. Either of these activities could result in an increase in emissions, if the permitting authority considers and authorizes such future changes as part of the NSR permitting process. We are proposing that the NSR permit must sufficiently describe the future new and existing emissions activities that comprise a Green Group and include terms and conditions for them, such as annual and short-term emissions limits. These terms and conditions assure that the Green Group activities will be properly operated to protect air quality as well as to meet BACT/LAER, as applicable.

In its permit application, the source must describe the new and existing emissions activities to be included in a Green Group in sufficient detail to allow the permitting authority to determine BACT or LAER (as applicable) for the Green Group taken as a whole and to conduct an ambient air impact analysis to safeguard relevant ambient increments and standards (including the determination of any offsets necessary in non-attainment areas) or any relevant Class I areas. The application, therefore, must provide information about the current existing emissions activities and the types of changes to be implemented, including specifics on emissions characteristics and the maximum total amount of emissions that will be generated by the Green Group's emissions activities after fully implementing the changes. If the source is unable to sufficiently describe the new and existing emissions activities that comprise the Green Group and the associated emissions, the permitting authority will not be able to issue a major NSR permit with a Green Group designation.

The information needed to describe the type of changes authorized is expected to vary on a case-specific basis and will depend on the type of control approach approved for BACT/LAER and the emissions characteristics of the included emissions activities and of the changes which are permitted to occur to them. That is, certain control devices like carbon absorbers and scrubbers may exhibit varying effectiveness in the removal of different substances. As a result, authorized changes subject to a BACT/LAER determination requiring such a control device would be constrained to exclude emissions of substances that cannot be controlled sufficiently by the device. Moreover, the

amount of detail needed to describe the future changes may increase where BACT is determined to be less than the most stringent technology for the proposed construction project(s). Similarly, the scope of authorized changes must be limited to ensure that they are compatible with the relevant monitoring, recordkeeping, and testing provisions of the permit. In addition, there may need to be restrictions on how the changes occur to ensure the effectiveness of the approved control device. For example, in certain situations, increased productive capacity may need to be permitted to occur in a manner which would not overload the control device for the Green Group.

The type of detail required in a permit to describe the authorized changes in the Green Group must also be sufficient under the proposed approach to allow the permitting authority to determine, when a change subsequently is implemented, whether the permitting authority contemplated that change in the scope of the advance approval contained in the major NSR permit. As a minimum, we expect that changes be described relative to the existing operations comprising the Green Group. That is, the permit must contain a detailed snapshot of the existing emissions activities included in the Green Group, and any approved changes would then be described as categories of changes to these baseline activities that maintain their fundamental integrity. Such changes might include: (1) Changes in products; (2) changes in raw materials; (3) reconstruction and/or replacement of existing process equipment; (4) increased capacity (either as changes to existing equipment or as new equipment); and (5) additions of new production lines and/or new support units.

When products or raw materials will be changed, the description should specify what the range of new products or raw materials might be and their compatibility to the existing emissions controls. When equipment will be added, reconstructed, or replaced, the permit should specify whether capacity might be changed and to what extent. Depending on its potential relevance to the BACT/LAER determination, the description might specify the maximum size and/or capacity of any changed or new equipment. In some situations, it might be necessary to describe the different types of authorized changes more specifically.

This proposed approach for describing authorized future changes is consistent with the approaches taken in our evaluated flexible permit pilots and

with our previously mentioned recommendations for describing AOSs in a title V permit.⁴⁹ Provided that all of the emissions activities identified as part of the proposed Green Group are vented through a common control device and approved through the major NSR permitting process, the source would be authorized (for purpose of major NSR) to implement over a 10-year period the changes that are advance approved in the permit without triggering further NSR review. For physical and operational changes a source undertakes that are not included in a Green Group, the applicability of NSR to those changes would be determined as these changes occur, in accordance with existing major and minor NSR procedures.

An emissions activity cannot be included in a Green Group some of the time and excluded at other times. Stakeholders suggested allowing such "intermittently-included" activities during pilot project discussions to address emissions activities that are subject to different applicable requirements depending on their operations. For example, a web-coating operation might be subject to the Pressure Sensitive Tape and Labels NSPS (40 CFR part 60, subpart RR) when manufacturing certain products, and not subject to any applicable requirement or emissions limitation when manufacturing other products. Some stakeholders suggested that such a coating operation could be included in the Green Group (and subject to the Green Group control approach) when subject to the NSPS, but excluded (and not subject to control) when its operations are not subject to the NSPS. We rejected this approach because of the increased complexity and the significant additional recordkeeping burden. Accordingly, after undergoing major NSR as part of the Green Group, the emissions activity remains subject to the requirements of the major NSR permit, including the BACT or LAER emissions reduction requirements, regardless of changes in the applicability of any other requirement.

If a source removes a particular emissions activity from an established Green Group at any time during its 10-year duration, the removed emissions activity will be subject to major NSR. For example, suppose that a Green Group consists of four emissions

⁴⁹Note that additional detail to describe the new and existing activities of a Green Group may be necessary for title V purposes. For example, more detail would be necessary to identify those emissions activities included in the Green Group that are also subject to other applicable requirements (e.g., MACT or NSPS).

activities and that the source proposes to withdraw activity No. 4 from the Green Group after its establishment. In order to do so, the permitting authority would subject activity No. 4 to major NSR as if it were a new major modification (i.e., contemporaneous BACT/LAER, as applicable, and ambient reviews). Simultaneously, the permitting authority (in the same major NSR action) would adjust downward the emissions limit of the Green Group (see discussion below) to account for the amount of emissions previously attributed to activity No. 4 (i.e., its baseline actual emissions and any emissions growth targeted to occur at activity No. 4). In addition, the permitting authority would verify that the original BACT/LAER limit could be met as it would now be applicable to the remaining emissions activities.

2. Emissions Limits for Green Groups

In general, two types of emissions limits must be set in the major NSR permit for Green Groups: (1) An emissions limit to constrain overall emissions for the Green Group; and (2) a limit to ensure that BACT/LAER technology is being employed and is effective (e.g., lbs/gal, percent reduction). These two limits complement each other and collectively implement the core provisions of the Green Group. The amount of any emissions increase from authorized changes would be limited by the annual emissions cap and the BACT/LAER emissions limitation, both of which would be placed in the major NSR permit.

An enforceable mass emissions limit must be determined for the pollutant for which the Green Group is established. We propose that the total emissions from the Green Group be limited by the annual emissions limit (on a 12 month total, rolled monthly basis) for the Green Group pollutant. The annual emissions limit would be set at the actual emissions associated with all the emissions activities included in the Green Group and controlled to the BACT/LAER level, as applicable. The annual emissions limit would also include any emissions increases that result from changes to existing emissions activities and/or changes to add new emissions activities that are authorized by the permit. The annual limits and any necessary short-term limits⁵⁰ for a Green Group must be set

⁵⁰ The NAAQS and increments for some pollutants are established over short-term periods as well as annually. For example, annual, daily, and 3-hour NAAQS and increments are defined for sulfur dioxide. Accordingly, some NSR permits include emissions limits for these shorter periods.

at a level demonstrated to safeguard applicable ambient standards and increments (i.e., NAAQS and PSD increments).

We propose that the annual emissions limit for a Green Group be developed in two steps. The first step is to calculate the group's baseline for actual emissions using the same methodology that is used in setting a PAL under the existing major NSR regulations. This baseline would therefore equal the baseline actual emissions (as defined in the major NSR regulations) for all the emissions activities in the group that existed during a 24-month period selected by the source within the 10 years preceding the Green Group permit application, minus the emissions of any of these existing activities that have been shut down since the 24-month period, plus the PTE of any emissions activities added within the group since the 24-month period. Baseline actual emissions must be adjusted downward for any non-compliant emissions during the 24-month period and for any emissions limitations that have become applicable since the end of the 24-month period. That is, a downward adjustment is necessary if any legally enforceable emissions limitation restricts an emissions activity's ability to emit the Green Group pollutant or to operate at levels that existed during the selected 24-month period. See the December 2002 preamble discussion of baseline actual emissions at 67 FR 80195. (Note that the definition of "baseline actual emissions" differs somewhat for electric utility steam generating units (EUSGUs) and other types of emissions activities. The preceding discussion applies to non-EUSGUs.) In addition, these baseline actual emissions must be adjusted downward as necessary to reflect application of the BACT/LAER to the Green Group.

The second step in setting the annual emissions limit for a Green Group is to calculate the emissions increase from any new emissions activities or planned changes to existing activities that are approved as part of the permit (i.e., an emissions increase increment to address the planned changes over a 10-year period.) This would be added to the baseline actual emissions level determined in the first step. Thus, the total Green Group annual emissions limit should reflect the actual emissions associated with all new and existing emissions activities included in the Green Group, all of which are controlled to the BACT/LAER level, as applicable.

In an attainment area, in reviewing the application, the permitting authority should weigh such factors as the

available PSD increment(s) in the area in determining whether to approve the annual limit proposed by the source for the Green Group. In a nonattainment area, the authorized emissions increase must be offset at the ratio prescribed by the Act or the applicable State, Tribal, or Federal implementation plan.

To the extent that they can be quantified, fugitive emissions also must be addressed for Green Groups as required under the Act and by EPA according to applicable major NSR regulations and requirements and guidance. This includes determining fugitive emissions from all existing emissions activities in the Green Group, as well as all increases in fugitives and maximum total fugitive emissions that will be generated in the future by the emissions activities in the Green Group. Such treatment of fugitive emissions is intended to be the same approach as that currently required for PALs.

An emissions limit or performance specification separate from the Green Group emissions limit determined above also must be set to reflect the application of BACT or LAER, as applicable. The format for these limits can vary (e.g., pounds of emissions per material input or per product output; or a percent removal efficiency) but are typically different from the tpy format of the limit applying to total annual emissions. In some cases, separate, additional BACT/LAER limits may be necessary to govern low concentration situations (e.g., the source would be required to meet either 98 percent removal efficiency or a 20 parts per million (ppm) outlet concentration) and to address startup, shutdown, and malfunction situations.

We also propose that a Green Group may meet the applicable BACT or LAER level of control through use of P2 alternatives for component emissions activities during some periods of operation instead of always sending all emissions to the common air pollution control device. Each of the P2 alternatives must independently qualify as achieving a BACT or LAER level of control in the major NSR permitting process. For example, an emissions activity such as a paint spray booth operation would be ducted to a common air pollution control device such as a thermal oxidizer to control VOCs from multiple emissions activities in a Green Group. As a P2 alternative, BACT or LAER might be established based on the use of compliant materials⁵¹ in the

⁵¹ For surface coating operations, "compliant materials" means coatings and solvents that are formulated to meet emissions limits without need of add-on controls. For example, coatings may be

spray booth operation. In this case, we propose that each of the included emissions activities must have ductwork extending to the common air pollution control device, but the source would be allowed to bypass the control device during periods when the source elects to use P2 consistent with the BACT or LAER determination on compliant materials. Notwithstanding, at all times, all activities included in the Green Group would be meeting a BACT (or LAER as applicable) level of control.

We believe that providing for a P2 alternative will encourage P2 at sources that wish to obtain a Green Group designation and provide an opportunity for sources that are pursuing P2 to adopt a Green Group. Accordingly, we are soliciting comment on whether such an option is appropriate and should be included in the Green Group program. We further request comment on whether this proposal goes far enough in encouraging P2. In particular, we take comment on whether we should allow a Green Group to be based on use of a P2 approach, rather than a common air pollution control device.

For the emissions activities that comprise the Green Group, we are not proposing to require that each emissions activity that is part of the Green Group designation be limited to a specific ton-per-year allocation. Instead, we propose that the annual aggregate limit is acceptable for the emissions activities that comprise the Green Group. For example, if each of the five emissions activities that are part of a Green Group contributes 50 tpy to the total annual aggregate limit of 250 tpy, we are proposing that the Green Group be subject only to a limit of 250 tpy for these emissions activities. A permitting authority, therefore, should not require a 50 tpy limit on each of the five emissions activities.⁵² This is because for PSD purposes, the source must determine BACT based upon the total amount of annual emissions, and the air quality impacts associated with such emissions (which all are emitted from the stack of the common air pollution control device) are accounted for in the NSR permitting process. Comparable reasoning applies for nonattainment major NSR purposes. We solicit comment on whether this approach is appropriate or whether there are other

formulated with high solids content and low VOC content.

⁵² In some cases, a source may have previously taken an emissions limit on a new or modified emissions unit to remain below major NSR applicability thresholds (often referred to as an "(r)(4) limit" based on § 52.21(r)(4)). Once the unit is included with a Green Group, it has gone through major NSR, and the (r)(4) limit will no longer apply.

considerations we should take into account.

Changes in emissions at ancillary units not included in the Green Group but serving it (such as storage tanks or utilities) must be accounted for in the air quality analysis conducted to evaluate ambient air quality and increment protection to the extent such emissions changes are required to be considered under the existing NSR regulations.⁵³ Ultimately, the permitting authority must determine the extent to which the requested expansion will be allowed under major NSR, taking into account the demonstrated need of the source, public comments received, and the air quality status of the affected area.

In some cases, a source may have previously taken an emissions limit on a new or modified emissions unit to remain below major NSR applicability thresholds (often referred to as an "(r)(4) limit" based on 40 CFR 52.21(r)(4)).⁵⁴ The major NSR rules provide that if (r)(4) limits are relaxed, the associated emissions unit must undergo major NSR review "as though construction had not yet commenced on the source or modification." We propose to clarify, without rule revision, the interface between (r)(4) limits and Green Groups as follows: When a unit with an (r)(4) limit is included as one of the emissions activities in an application for a Green Group, the (r)(4) limit no longer applies, provided that the NSR review process considers the unit as if construction had not yet commenced on it.⁵⁵ Moreover, any (r)(4) limit would no longer apply even after the expiration of any Green Group.

Under the current NSR regulations, an emissions change is only creditable to the extent the Administrator has not previously relied on it in issuing a major NSR permit. See 40 CFR 52.21(b)(3)(i). Accordingly, emissions increases and decreases that occur at the emissions

⁵³ The EPA has issued a Notice of Proposed Rulemaking that addresses, in part, the issues of "debottlenecking" and "increased utilization." See 71 FR 54235, September 14, 2006. In this rulemaking on flexible air permits, we do not intend to change current requirements related to "debottlenecking" or "increased utilization," but we will follow, as applicable, any final rule changes occurring as a result of the September 2006 proposal.

⁵⁴ Parallel requirements are found at 40 CFR 51.165(a)(5)(ii) and 51.166(r)(2).

⁵⁵ The baseline actual emissions for a unit with an (r)(4) limit are calculated just as for any other emissions activity included in a Green Group, complete with the reduction for the effect of the required BACT/LAER control. However, such units may be among the emissions activities with authorized future physical or operational changes, and emissions from such units could subsequently increase (as part of the authorized emissions increase increment), but under BACT/LAER controls.

activities in a Green Group during the effective period of the Green Group designation are not included in netting calculations to determine whether changes that occur at the emissions units outside the Green Group result in a major modification. However, if the source reduces actual emissions from the Green Group below the emissions limit established for the Green Group in its NSR permit, the source may generate a credit for the difference between the permitted limit that qualified the unit as a Green Group and any new, lower emissions limitation established, if such reductions are surplus, quantifiable, permanent, and enforceable from a practical standpoint.⁵⁶ If however, an established Green Group wishes to increase its emissions beyond its permitted tpy limit, reductions achieved by units outside the Green Group cannot be used to generate emissions reductions to net the Green Group out of NSR. If an established Green Group wishes to increase its emissions, it must go through NSR again to establish a new limit, which would be effective for a new 10-year timeframe. In addition, we also propose to add a restriction that no credit can be generated from eliminating emissions increases that were authorized under the Green Group permit but never realized. Without this restriction, sources would be allowed to generate credits for authorized expansion that never occurred.

In nonattainment areas, sources are required to obtain offsetting emissions reductions for the significant emissions increases that are authorized under a major NSR permit. Depending on the nonattainment pollutant and classification of the nonattainment area, the source may be required to obtain offsets in excess of the emissions increase at a specified ratio. For example, in accordance with the existing NSR requirements, in a serious ozone nonattainment area, a source must obtain VOC offsets in an amount 1.2 times the significant VOC emissions increase. A source that applies for a Green Group designation in a nonattainment area must obtain offsets for the approved increase in emissions of the Green Group pollutant (i.e., the difference between the level approved in the Green Group permit and the baseline actual emissions of the group). Under existing NSR requirements, offsets must be federally enforceable at the time the major NSR permit designating the Green Group is issued, in accordance with section 173(a) of the CAA, but need not be achieved until the

⁵⁶ Such credits in order to be used as an emissions offset must also be federally enforceable.

new or modified source commences operation, consistent with section 173(c) of the CAA. We propose that for Green Groups, the offsets must be in effect by the time the first authorized change among the activities in the Green Group (e.g., equipment modification or addition) commences operation. To simplify the process and recordkeeping, and to assure that offsets are in place as required, we propose that the entire amount of offsets required by the permit must be in effect at the time that the first authorized change (e.g., modified or added emissions activity) begins operation. Alternatively, we seek comment on whether it is only necessary to require the source to obtain offsetting emissions reductions in sufficient quantity to offset: (1) The actual changes within the Green Group as they occur; or (2) each phase of construction before its operation.

In some cases, a source with an established Green Group may subsequently request the permitting authority to allow the addition of greater emissions than are permitted by the existing annual emissions limit. Here, we propose that the permitting authority be able to either: (1) Establish a higher annual emissions limit to accommodate the desired new emissions increase as part of a comprehensive major NSR process (this process would reestablish the Green Group, including a reevaluation of the prior BACT/LAER determination); or (2) terminate the Green Group while retaining its emissions limits and other requirements and then subject the emissions of new project(s) to the applicable NSR process. Similarly, if a source with a Green Group exceeds its Green Group emissions limit, then the source will be subject to appropriate enforcement action. In addition, the source would be subject to enforcement action for any violations of other applicable requirements (e.g., MACT, NSPS) that would also apply to emissions activities included in the Green Group.

3. Monitoring, Recordkeeping, Reporting, and Testing (MRRT) Requirements for Green Groups

As mentioned, the major NSR review process must also determine the level of MRRT to assure compliance with both the control technology requirement and the emissions limit(s). A source must monitor all emissions activities that comprise the Green Group to ensure compliance with the Green Group limit. These monitoring, recordkeeping, and reporting requirements are incorporated into the NSR permit that establishes the Green Group.

As explained above, in December 2002, we promulgated revisions to the major NSR program, which included, among other things, MRRT requirements for tracking emissions associated with a PAL.⁵⁷ In these proposed regulations, the same MRRT we promulgated in December 2002 for PALs would also be required to track a source's compliance with the Green Group emissions limit set forth in the major NSR permit. Further, we are proposing additional MRRT provisions to assure that the common air pollution control device achieves BACT or LAER. More specifically, the permit must require the owner or operator to monitor and record data sufficient to ensure that the common control device for the Green Group accommodates emissions resulting from the emissions activities that comprise the Green Group and that it achieves the level of emissions reduction required under the applicable BACT or LAER requirement.⁵⁸

We are not proposing to require a source to notice individual changes at Green Groups. However, changes which are also subject to a MACT standard or NSPS may well be required to file a notice under the General Provisions requirements of those programs. State permitting authorities may under other regulatory authorities require additional records and notices for certain changes (e.g., notices for new units under State air toxics program, or a notice for a new emissions unit added to the site of a source with a title V permit under an approved off permit procedure) to assure compliance under these other authorities. In addition, we propose that the source submit a semi-annual report that, in part, contains a list of any emissions activities included in the Green Group that were added during the preceding 6-month period. We encourage permitting authorities to combine this report with the 6-month monitoring report otherwise required under part 70 (*see* 40 CFR 70.6(a)(3)(iii)(A)). We request comment on this approach to recordkeeping, reporting, and notification requirements. In particular, we solicit comment on the appropriateness of applying the mentioned 2002 PAL

⁵⁷ See 67 FR 80221 for a discussion of the MRRT requirements promulgated for PALs by the Agency in December of 2002.

⁵⁸ Note that BACT/LAER requirements in terms of percent reduction can be difficult or impossible to achieve during periods of low or dilute flow. Where a percent reduction requirement is imposed, we recommend that the BACT/LAER determination include an alternative concentration standard for such periods. For example, BACT/LAER for VOC control might be 98 percent reduction or an outlet concentration of 20 ppm by volume on a dry basis.

monitoring requirements to Green Group emissions limits.

4. Public Participation for Green Group Designations

Because Green Groups must be established in a major NSR permitting action, the public is assured of an opportunity to participate in the process. Major NSR regulations require the permitting authority to notify the public when it makes a preliminary determination regarding a permit application, to make the application and associated materials available for public inspection, and to provide an opportunity for a public hearing and for a written comment period of not less than 30 days.⁵⁹ In the case of a proposed Green Group permit, the annual emissions limit that would be established for the Green Group highlights the maximum possible annual emissions increase for public review. The other aspects of the proposed Green Group also would be highlighted for comment, including the preliminary BACT/LAER determination, description of anticipated expansion, and the proposed requirements for monitoring, recordkeeping, and reporting.

In addition to the opportunity for public participation typically provided consistent with our major NSR regulations, we recommend that the permitting authority consider using its discretion to enhance the public participation process as necessary to provide adequate review opportunity for individual Green Group permits. We expect that this may be advisable when the first Green Groups in an area are being established or when unique and/or complex issues arise in a particular case. *See* section IV.C above for additional discussion on the types of enhanced public participation and when it might be appropriate.

5. Duration and Renewal of the Green Group Designations

We propose that the Green Group designation last for a single 10-year period. Any emissions activities that are advance approved and constructed during the effective period of the Green Group designation benefit from Green Group flexibility. At the end of the 10-year period, the original Green Group designation ends.

After 10 years, the source may apply for a new Green Group designation by going through the same procedures as for the initial Green Group designation,

⁵⁹ *See* 40 CFR part 124 for permits issued under § 52.21. *See* § 51.161 for permits issued under State programs approved pursuant to §§ 51.165 and 51.166.

including going through a new major NSR permitting exercise and a new BACT/LAER determination. To avoid a gap between the expiration of the initial Green Group designation and the effective date of a new designation, we propose a renewal process similar to the process for PALs. Specifically, a source that wishes to reestablish its Green Group must submit a major NSR application to the permitting authority at least 6 months prior to, but not earlier than 18 months from, the expiration date of the Green Group. If the source submits a complete application within this period, the existing Green Group requirements would continue to be effective until the new major NSR permit reestablishing the Green Group is issued.⁶⁰ We take comment on the need to require an earlier submittal time (i.e., earlier than 6 months prior to expiration) given that a BACT/LAER reevaluation is involved.

If the applicant does not wish to reestablish the Green Group designation, the source would simply allow the designation to expire and then become subject to the major NSR applicability test for future changes.⁶¹ However, the major NSR permit does not expire, and the emissions unit defined by the Green Group would remain permanently an emissions unit for purposes of major NSR, subject to the BACT or LAER control requirement, annual emissions limit (and any shorter-term limits), and MRRT requirements imposed by the Green Group permit. We take comment whether to allow the source to divide up the Green Group into smaller emissions units and to allocate the emissions limit correspondingly.

We are proposing the 10-year duration of a Green Group designation for two reasons. First, we believe that this time

frame represents a balance between the useful life of the emissions control system and the time frame in which additional major NSR review is likely to result in little, if any, added environmental benefit.

Prior to the December 2002 NSR Improvement rulemaking, we examined the useful life of air pollution control devices. Based on the guidelines for equipment life for nine commonly used emissions control technologies,⁶² we determined that a reasonable average equipment life is 15 years. See 87 FR 80229. We also looked at the incremental improvement in control technology over time. Over the 15-year period that we studied (1988–2002), we did not find any data to suggest that improvements in control technology are occurring that are of sufficient magnitude to lead to BACT determinations requiring replacement of control systems on existing units that are equipped with BACT.⁶³ Thus, we believe that 15 years likely represents a reasonable balance between the useful life of air pollution control devices and the time frame in which a new BACT determination would require additional emissions control. Ten years represents a more environmentally cautious approach to balancing these factors.

Second, a 10-year duration for a Green Group is supported by the rationale we used in choosing a 10-year period for the duration of PALs. For PALs we concluded that a 10-year period was necessary to ensure that the normal business cycle would be captured generally for any industry. See 67 FR 80216. The PAL's 10-year period also was intended to balance the need for regulatory certainty, the administrative burden, and a desire to align the PAL renewal with the title V permit renewal. See 67 FR 80219. These reasons also apply with equal force in guiding the selection of a similar 10-year period for Green Groups.

As a practical matter, we realize that the "ideal" duration for a Green Group will vary somewhat by emissions control technology and by pollutant; however, we believe using a single time frame will provide simplicity in the rules. We have chosen to propose a 10-year duration for Green Groups to maintain consistency with PALs and to

maximize the environmental benefits of Green Groups.

We are also taking comment on a 15-year duration for a Green Group designation. As discussed above, we believe that air pollution control technology typically is quite stable during this period. In addition, the fact that BACT/LAER is determined for the entire Green Group taken as a whole (including authorized expansions), rather than for individual changes piecemeal, is likely to result in more effective and more costly controls than would be applied under mainstream major NSR permitting. As a result, it is even less likely that a subsequent BACT/LAER determination at a Green Group would require a new control device within a 15-year period. Thus, we believe that a 15-year period could also represent a reasonable and appropriate duration for Green Groups.

We propose that the effective date of a Green Group designation would be the effective date of the major NSR permit that designates the Green Group. We propose that the Green Group designation lasts for a period of 10 years from the effective date.

If construction or modification of a control device is required by the BACT/LAER determination in the Green Group permit, no advance approved changes in the permit are allowed to occur before that construction or modification is completed. That is, new and modified emissions activities within the Green Group may not be operated until the new or modified control device is in operation. This will result, in effect, in a reduction of the 10-year duration for the Green Group by the length of time between the effective date of the permit and the beginning of operation of this control device in order to comply with BACT/LAER.

We do not believe, however, that the unchanged, existing emissions activities in the Green Group should be required to cease operation while the control device is constructed or modified. This would be the outcome if these emissions activities were required to meet the BACT/LAER emissions limitation(s) on the effective date of the Green Group permit. Accordingly, we are proposing that, where the BACT/LAER determination requires a new or modified control device, the Green Group permit may provide that the existing emissions activities within the Green Group are not required to meet the BACT/LAER emissions limitation(s) or the annual emissions cap for the Green Group until the new or modified air pollution control device is in operation. In the interim, such emissions activities may continue to

⁶⁰In order to streamline the process to update as necessary the corresponding title V permit, the permitting authority might: (1) Structure the permit to retain the initial BACT limit and support conditions unless affirmatively revised; and (2) revise the title V permit in parallel to revising the NSR permit or use an "enhanced NSR" process to do so in order to optimize use of comment periods and opportunities for public hearings.

⁶¹We expect that in most cases this will be the actual-to-projected-actual applicability test adopted in the December 2002 NSR Improvement rulemaking. The actual-to-projected-actual test is currently in effect in all jurisdictions where § 52.21 applies, including in States and Indian country. For nonattainment major NSR and SIP-approved PSD programs, States are currently in the process of revising their SIPs to incorporate the actual-to-projected-actual test (or some other preferred approach if they can demonstrate that it is at least as stringent as the actual-to-projected-actual test). Thus, the actual-to-projected-actual test (or an approved alternative approach) should be in effect in all jurisdictions by the time that Green Groups begin to expire.

⁶²Vatavuk, William, "Part II, Factors for Estimating Capital and Operating Costs," *Chemical Engineering*, Nov. 3, 1980.

⁶³See "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules," EPA, November 21, 2002, pp. 10–11 and Appendices C and D. Available at <http://www.epa.gov/NSR/documents/nsr-analysis.pdf>.

meet pre-existing emissions limitations. In contrast, where the existing control device has been determined to represent BACT/LAER without modification, all existing emissions activities must meet BACT/LAER upon the effective date of the Green Group permit.

A situation that can result in termination of a major NSR permit under the existing NSR rules is related to the timely commencement of the program of construction authorized by the permit. Section 52.21(r)(2) of the existing federal PSD rules provides that approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Administrator may extend the 18-month period upon a satisfactory showing that an extension is justified.⁶⁴

We are proposing to exclude Green Groups from the section 52.21 (r)(2) provisions. However, we are also proposing a new safeguard for those Green Groups that rely on a new or upgraded BACT/LAER air pollution control device. Although the Green Group designation becomes effective on the effective date of the permit, the source must complete construction on the new air pollution control device before any changes advance approved in the permit can be operated. See section VII.D for more discussion of the rationale for this proposal.

We believe that Green Group activities also should be exempted from the paragraph (j)(4) provisions of both 40 CFR 52.21 and 51.166. Currently, the (j)(4) provisions require for phased construction projects that the BACT determination be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. There is no need to evaluate the interdependence of changes since, under the proposed Green Group approach, the Green Group is considered one ongoing program of change over a 10-year period. Accordingly, we propose to remove the applicability of 40 CFR 52.21(j)(4) and 51.166(j)(4) from Green Groups. See section VII.D for our rationale concerning this proposal.

⁶⁴ The Federal PSD rules apply in jurisdictions that do not have their own approved PSD programs, including a number of States (to which we have delegated implementation or in which EPA directly administers the program) and in Indian country. Many State and local major NSR programs include similar provisions.

6. How are Green Groups similar to PALs?

We also take comment on whether a Green Group is a form of PAL. As noted previously, the Green Group establishes an actual emissions-based limitation for a logical collection of emissions activities (*i.e.*, all those ducted to a common control device). The Green Group approach relies upon several of the same principles and techniques used in establishing and managing growth for sources with PALs and other types of emissions caps. We experimented with PALs and emission caps as part of the pilot program and have, as a result, a significant amount of development, implementation, and emissions tracking experience using these approaches. Specifically, a Green Group is established based on the actual emissions, plus authorized emission increases associated with the addition or modification of emissions activities. The authorization of additional capacity for new or modified emissions activities provides sources with the ability to respond to market changes and eliminates administrative burden associated with multiple permit actions. In exchange, the emissions associated with a Green Group are constrained by an emissions cap for an established period of time. It offers substantial environmental benefits by assuring that all emissions activities within the group are well-controlled and eliminates the ability of the Green Group to undertake insignificant emissions increases that could go unreviewed as separate, independent projects.

Although the Green Group builds an emissions increase into the initial cap, it does so in a way which complies with all the requirements that we established for increasing a PAL. Moreover, the approved increase in actual emissions is allowed only if it is due to the expansion authorized to occur within the Green Group, since the BACT/LAER requirement prevents any backsliding in the control of existing emissions activities in the Green Group. Thus, subsequent changes in the Green Group whose actual emissions (in combination with those of existing activities included in the Green Group) do not exceed the Green Group emissions limit and will be ducted to a control device determined to meet BACT/LAER, as applicable, have already been regulated under major NSR in anticipation of the changes being made. We solicit comment as to whether the Green Group is a permissible application of the PAL principles as applied to a logical collection of emissions activities that are ducted to a common control device

and, if so, what increase in emissions for existing emissions activities and/or increases for new emissions activities can be authorized to occur under a major NSR permit. We also seek comment on the potential applicability of these same PAL principles to a proposed Green Group that involves only new emission activities ducted to a common pollution control device authorized under major NSR.

C. How is a Green Group designation incorporated into a title V permit?

Major and minor NSR permit terms and conditions are applicable requirements for purposes of title V. As such, they must be incorporated into the source's title V permit. These proposed major NSR rules list the required content for a NSR permit that designates a Green Group. Part 70 requires that these permit terms and conditions be incorporated into the source's title V permit according to the provisions of the applicable title V permit program (but no later than when the title V permit is renewed). One potential route for incorporating these terms and conditions into the title V permit is through an administrative amendment, if an "enhanced" NSR process is used to designate the Green Group. See 40 CFR 70.7(d)(v). This mechanism is available if the EPA-approved NSR program includes both procedural requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8 and substantive requirements substantially equivalent to those contained in 40 CFR 70.6.⁶⁵

We expect that in many cases, the emissions activities included in the Green Group will be subject to other applicable requirements, such as SIP requirements, NSPS, and/or MACT standards. In such cases, concurrently with the major or minor NSR process, as applicable, the source can seek to modify its title V permit to include baseline operating terms and conditions and/or AOSs (as necessary) to address and assure compliance with all applicable requirements that apply to the authorized emissions activities comprising the Green Group, including any advance approvals. Because the BACT or LAER requirement that applies to the Green Group typically is the most

⁶⁵ Section 70.6 describes the required elements of permits issued under part 70 such as emissions limits, applicable requirements, permit duration, and MRRT. Section 70.7 describes the process for issuing, renewing, reopening, and revising permits. Section 70.8 describes the process by which EPA will review permits and State programs, object to permits, and act on public petitions. It also requires the permitting authority to give notice of each draft permit to any affected State and to consider its comments.

stringent of the applicable requirements, Green Groups are often good candidates for streamlining as mentioned in section VI.A, footnote 26, and section VII.F of this preamble.

This proposal provides permit flexibility in that a source can obtain a Green Group through the major NSR permit process (which constitutes the required NSR authorization for future changes in the group) and, at the same time, modify its title V permit to include the Green Group and AOSs, as necessary, to address the other applicable requirements that apply to the emissions activities in the Green Group. The approval of the Green Group changes with regard to all relevant permitting requirements means that the source can implement these changes authorized under protection of the permit shield without seeking any further title V approvals.

D. What is the legal rationale for Green Groups?

The basic CAA provisions establishing permitting requirements for attainment/unclassifiable areas (the PSD requirements) under part C of title I, and for nonattainment areas under part D of title I, are the basis for this action. With respect to the PSD requirements, CAA section 165(a) provides, in relevant part—

No major emitting facility on which construction is commenced after the date of the enactment of [the 1977 CAA Amendments], may be constructed in any area to which this part applies unless—

(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part * * *

The term “construction” is defined to refer to both construction of a new source and “modification” of an existing source. *See* CAA section 169(2)(C).

With respect to the nonattainment major NSR requirements, section 172(c)(5) of the Act provides that nonattainment SIP provisions “shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 173.” Section 173(a), in turn, provides that “permits to construct and operate may be issued if [certain requirements are met].”

These PSD and nonattainment major NSR provisions contain no specific requirements concerning the maximum length of time that may elapse between the issuance of the permit and the beginning of construction, the maximum length of time that the

construction may take, whether the construction may occur in phases, or the maximum period of time that may elapse between any construction phases. By comparison, other, related major NSR provisions of the Act do contain timing requirements. For example, for PSD purposes, section 165(c) directs the permitting authority to grant or deny the permit within one year after the date of filing of the completed permit application. As a second example, for nonattainment major NSR purposes, section 173(a)(1)(A) directs that emission offsets must be obtained “by the time the source is to commence operation.” The lack of specific timing requirements concerning construction in the relevant provisions of sections 165(a), 169(2)(C), 172(c)(5), and 173(a) means that EPA has flexibility in determining the circumstances under which construction timing requirements are necessary, and in promulgating regulations to that effect.⁶⁶

By notice dated June 19, 1978, we promulgated certain requirements concerning phased construction. *See* 43 FR 26380. Under those requirements:

Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Administrator may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

⁶⁶ It should be noted that for purposes of section 165(a), as quoted above, the term “commenced” is defined, under section 169(2)(A), as follows: “The term ‘commenced’ as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (i) Begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time.” This definition of “commenced,” in context, served the purpose of subjecting a source to the PSD requirements when the source undertook the actions included in the definition, and thereby “commenced” construction, even if EPA had, by regulations promulgated prior to enactment of the PSD provisions in the 1977 Clean Air Act Amendments, attempted to exempt the source from regulatory PSD review. For present purposes, the fact that Congress defined “commenced” to include construction timing requirements for the narrow purpose described above, but did not apply such requirements to construction more broadly, further supports our view that we have discretion in applying construction timing requirements.

See 40 CFR 52.21(r)(2).

For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

See 40 CFR 52.21(j)(4) and 51.166(j)(4).

We stated as the reason for these requirements:

The Administrator is concerned about the issuance of permits for phased construction projects that would have the effect of “reserving” the increment for a single source, thereby limiting growth options in the area. The options are to not issue phased construction permits at all or to limit the conditions under which a phased construction may reserve an increment well into the future. The Administrator intends to implement the latter option when plans for a phased project are certain and well-defined. One mechanism to be used is to reassess the BACT determination for the later phases of the project prior to construction to ensure that the most up-to-date control technology will be used. The Administrator will specify at the time that the original permit is issued which BACT determinations will be reassessed. The Administrator may also adopt regulations in the future to deal with this issue more comprehensively.

See 43 FR 26396.

The EPA proposes to exclude Green Groups from the requirements of 40 CFR 52.21(r)(2), 52.21(j)(4), and 51.166(j)(4) on policy grounds. The Green Group designation provides a vehicle for a source willing to describe its construction plans in its permit, as well as employ BACT/LAER emission controls and comply with other major NSR requirements, in return for the ability to make a variety of changes without the burdensome process of iterative permitting actions. We believe that making such changes (as authorized within Green Groups) can be fairly described as merely implementing the major NSR permits as approved. That is, no authorized changes over the 10-year period need to be reevaluated as a possible new modification since those changes have already been subjected to major NSR, including a determination of BACT/LAER requirements and the approval of ambient air quality impacts or the acquisition of offsets. We believe that the exclusion of Green Groups from these provisions is needed to provide an adequate level of certainty and flexibility to participating sources (i.e., the certainty that a BACT/LAER

determination will last a reasonable duration). This proposal would ensure the basic premise of the Green Group approach (i.e., sources are just making those changes contemplated and approved by the permit). It would do so by requiring the description of the changes in the permit to be sufficiently detailed to assure compliance with the required BACT/LAER and monitoring approaches and to distinguish the changes from those not authorized to occur under the approved Green Group. We are proposing a safeguard, in that any changes advance approved for a Green Group relying on a new or modified control device to meet BACT/LAER could not be implemented until the control device meets the BACT/LAER determination in the permit.

It is within our discretion to remove Green Groups from 40 CFR 52.21(r)(2), 52.21(j)(4), and 51.166(j)(4) through rulemaking when doing so better serves the purposes of the major NSR program.⁶⁷ As noted above, the 40 CFR 52.21(r)(2) provisions were established by EPA in rulemaking to safeguard against sources tying up increment consumption rights without making a substantial financial investment and against sources inappropriately avoiding the application of control technology improvements that might have occurred since their permit was issued. (See 43 FR 26396, June 19, 1978.) For several reasons, we do not believe that these concerns apply to Green Groups as we are proposing them.

First, at least in the case when a new or modified air pollution control device is required, the source under this proposal must make substantial financial commitment to comply with the Green Group designation. This type of source has every incentive to complete the construction of the air pollution control device expeditiously because, as described above, the remaining period for the Green Group qualification is reduced accordingly.

Further, based on our overall pilot permit experience, sources that wish to obtain a flexible permit approach are likely to use it for changes at multiple emissions activities that could be constructed over several years. Our evaluation of the pilot permits found that the authorized flexibilities were used extensively and frequent changes were made.

In addition, once the air pollution control technology is in operation, we do not believe significant additional

environmental benefits will be gained by requiring the source to revisit the BACT or LAER determination for the changes that are approved as part of the Green Group, but may not be constructed for several years. As noted above, we do not believe that there will be significant incremental improvements in state-of-the-art control technology over a 10-year period. Moreover, the incentive to be able to make changes within a Green Group without further reviews or approvals can lead sources to employ BACT/LAER emissions controls when they are not required to do so, in order to establish a Green Group.

Finally, we believe that Green Groups are likely to involve controls that are state-of-the-art air pollution control devices since the device must be sized and designed to accommodate all of the emissions associated with the emissions activities that comprise the Green Group, including the authorized emissions increase. We believe that the BACT determination for a Green Group is likely to be more stringent than BACT for the individual existing emissions activities or for the individual authorized changes alone because it will likely be more cost effective to control a larger amount of emissions. The BACT or LAER selected for the Green Group is based on the emissions associated with all of the approved emissions activities, and the BACT or LAER level must be achieved (at least in part) through the use of a common air pollution control device.

For essentially the same reasons for removing the applicability of 40 CFR 52.21(r)(2) provisions from Green Groups activities, we believe that these activities should be exempted from the (j)(4) provisions of both 40 CFR 52.21 and 51.166. The (j)(4) provisions currently require for phased construction projects that the BACT determination be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. There again is no need to evaluate the interdependence of changes since, under the proposed Green Group approach, a continuum of changes is likely over a 10-year period while a change in the BACT determination is not.

On the other hand, we do not propose to exclude the provisions of 40 CFR 52.21(r)(4), 51.166(r)(2), and 51.165(a)(5)(ii) from applying to NSR permitting actions to establish Green Group designations. These provisions subject a source to major NSR upon the relaxation of certain permit terms that

had allowed the source to avoid major NSR. In the designation of a Green Group, the emissions unit (which could include an emissions activity to which an (r)(4) limit was attached) will undergo major NSR review and be subject to BACT or LAER. Thus, there is no need to specifically exempt Green Groups from the provisions of 40 CFR 52.21(r)(4), 51.166(r)(2), and 51.165(a)(5)(ii) during the life of a Green Group or after its expiration.

This legal rationale for Green Groups differs from the legal rationale for Clean Units, a provision in the 2002 NSR Improvement rules that the U.S. Court of Appeals for the D.C. Circuit vacated in *State of New York, et al., v. U.S. EPA*, June 24, 2005, 413 F.3d at 40. As noted above, an existing stationary source triggers NSR when it makes a "modification," which is defined, under CAA section 111(a)(4), as "any physical change. * * * which increases the amount of any air pollutant emitted" by the source. The EPA based the Clean Unit provision on the premise that the source's construction activities following permit approval do not constitute a "modification" under CAA section 111(a)(4), and therefore do not trigger application of NSR, even if they constitute a physical change, as long as the change does not increase the source's permit allowable emissions. We interpreted the term "increase[]" under CAA section 111(a)(4) to authorize an "allowables" measurement, at least when a source meets the requirements for Clean Units. The D.C. Circuit vacated this provision on grounds that in the context of section 111(a)(4), the plain language meaning of the term "increase[]" refers to actual emissions, not allowable emissions. In contrast, this legal rationale for Green Groups is based on the premise that the changes and emissions activities that occur within a Green Group are specifically authorized to occur as a result of undergoing, not avoiding, major NSR. Conversely, other changes that a source seeks to implement, but are not authorized in the Green Group, cannot occur without first obtaining all necessary preconstruction approvals that would apply to such changes. The determination of whether the newly proposed, but unauthorized changes trigger NSR would be made using the "actual-to-projected-actual test" upheld by the D.C. Circuit in 2005.

As noted above, the CAA permit provisions do not by their terms specify timing requirements for phased construction. Current regulations authorize phased construction activities, within certain constraints, and those constructions activities cannot be

⁶⁷ Indeed, as quoted above, 40 CFR 52.21(r)(2) explicitly provides that "[t]he Administrator may extend the 18-month period upon a satisfactory showing that an extension is justified."

considered to be “physical change[s]” that could amount to a “modification.” This proposal is based on the same legal rationale, and simply relaxes those regulatory constraints under certain circumstances, for the policy reasons described above.

E. What are the conforming regulatory changes we must make to implement the Green Group concept?

We are proposing regulatory language for 40 CFR 51.165, 51.166, and 52.21 to add Green Group provisions. For Green Groups, we propose to add new provisions at 40 CFR 51.165(i), 51.166(z), and 52.21(dd). We are also proposing to revise 40 CFR 52.21(j)(4) and (r)(2) and 40 CFR 51.166(j)(4) to exempt Green Groups from these provisions.

In addition, for Green Groups, we propose to amend as necessary the existing provisions related to netting, emissions offsets, and determining the emissions increase that will result from a proposed project. See this proposed regulatory language for the full range of these changes, for example in 40 CFR 52.21(a)(2)(v).

We are also proposing to make conforming changes to the regulatory language in appendix S of part 51, although we have not provided specific regulatory language in this proposal. Appendix S contains the permitting program for major stationary sources in nonattainment areas lacking an approved part D NSR program. It applies for the transition period between a new nonattainment designation and our approval of a SIP revision to implement the nonattainment NSR requirements (i.e., 40 CFR 51.165) in the area (see 40 CFR 52.24(k)). We recently revised appendix S to conform to our December 2002 NSR regulations (see 72 FR 10367, March 8, 2007). At the same time that we would finalize the changes to 40 CFR 51.165, 51.166, and 52.21, we intend to finalize analogous ones in appendix S. Because the Green Group provisions would be conforming changes and the public has the opportunity to review and comment on the conceptual framework and regulatory language proposed, we will not solicit additional comments on these provisions as they apply in appendix S.

F. What is an example of how a Green Group might be used in combination with a title V permit?

Examples 1 and 2 in section VI.D described how AOSs and incorporation of advance approvals in a part 70 permit could be used to provide flexibility in certain situations. The following

example 3 describes how Green Groups can provide operational flexibility across applicable requirements through streamlining.

Example 3: Magnetic Tape Plant With Multiple Future Changes

This example illustrates a Green Group and indicates how a source and permitting authority can streamline Green Group requirements with other applicable emissions control requirements to craft a flexible title V permit that authorizes a range of changes at the source while minimizing the permit terms and conditions necessary to assure compliance with all the associated applicable requirements. In this example, a magnetic tape manufacturing facility located in an attainment area consists of two large production buildings (i.e., Buildings 1 and 2), each with seven magnetic tape process lines. In particular, the source has web coating lines used in the manufacture of magnetic data storage media as well as equipment for handling raw materials associated with coating operations, storage of products or materials, and power boilers to support the process activities.

Five of the existing magnetic tape coating lines in Building 1 are subject to the MACT standard (part 63, subpart EE), which requires a 95-percent HAP emissions reduction from the process lines and associated solvent storage tanks, mixing vessels, solvent recovery equipment, and waste handling devices. Two of these five lines are also subject to the NSPS for magnetic tape coating (part 60, subpart SSS), which requires up to 95-percent control of VOCs from coating lines and mixing vessels. The other two lines are not regulated under part 60 or part 63 because they are grandfathered from NSPS subpart SSS and do not emit any HAP. However, these two lines are subject to an emissions limitation under the SIP that requires an 80-percent reduction in VOC emissions. For major modifications, major NSR in this PSD area would require, for this source, application of BACT (determined on a case-by-case basis), along with a determination that the VOC emissions increase, among other things, will not cause or contribute to an exceedance of the ozone NAAQS or have an adverse impact on the air quality related values of any Class I area. The existing storage tanks are grandfathered from the NSPS (part 60, subpart Kb), but are subject to the MACT standard (subpart EE) to the extent that they store HAP.

The VOC emissions from the equipment in Building 1 are currently controlled with a large, very efficient

(96-percent control) carbon adsorption system which the source installed at the time it became subject to MACT subpart EE. This resulted in voluntary over-control of the two lines subject only to the SIP limitation. The source adopted this control approach so as to retire the old control devices that previously served these two lines and to allow for flexibility in future operations. With the voluntary over-control of these two lines, current total annual VOC emissions from Building 1 are 500 tpy. The amount of this over-control would be approximately 572 tpy, assuming that the seven lines are equal in their contributions to the total VOC emissions of Building 1.

The source would like the flexibility to make a range of changes within Building 1, but the exact changes within this range will depend upon business conditions during the permit term and, therefore, are not yet known. Overall, the source seeks the flexibility to make the following changes:

- Use new raw materials in coating solutions or use an entirely new coating solution;
- Modify the existing process equipment; and/or
- Add new process equipment of a similar nature to existing equipment (including new coating lines) within this building. This new equipment would be limited to equipment included in the definition of “magnetic tape manufacturing operation” in MACT subpart EE (40 CFR 63.702).

The source may pursue a two-part approach to obtain the desired flexibility to make changes within Building 1: (1) Obtain a PSD permit that designates Building 1 as a Green Group and advance approves the future changes; and (2) revise the existing title V permit under the significant modification process to incorporate all applicable requirements, as required by part 70, for the changes that are advance approved in Building 1 under PSD.

Assuming the source follows this approach, the source submits a PSD permit application requesting a Green Group designation for Building 1. This permit application must include descriptions of the types of changes the source intends to make there over the next 10 years (as noted above), along with emissions information associated with both the changes, especially regarding any requested increases in emissions, and the existing operations of Building 1.

The PSD application must demonstrate how those changes and the associated emissions increases in combination with existing emissions will comply with PSD requirements for

Green Groups. In order to meet BACT, the source in its PSD application proposes to control emissions from Building 1, including emissions from anticipated changes, by (1) Using permanent total enclosures to capture all VOC emissions from the building (including coating lines and associated mixing vessels, solvent recovery equipment, and waste handling devices), and (2) venting these enclosures and the storage tanks to the highly efficient (96-percent efficient) carbon adsorption system currently used to control emissions from all the equipment in Building 1. The PSD application includes the following BACT-related demonstrations:

- A demonstration that the resultant 96-percent control of VOCs qualifies as BACT; and
- A demonstration that the existing carbon adsorption system has the capacity to maintain 96-percent control in the face of the increased solvent loading associated with the anticipated changes.

In addition, the application contains a proposed Green Group emissions limit of 600 tpy VOC and all emissions information relied upon to calculate this limit. The proposed limit, in this case, is the sum of the current baseline actual emissions for each existing emissions activity comprising the group (since that baseline already reflects application of the proposed BACT), which the source has calculated to be 500 tpy, plus a 100 tpy emissions increase increment to accommodate the calculated, maximum emissions from any future changes for which the source is seeking approval. In other cases where current controls do not reflect application of the proposed BACT, sources also would be required to submit actual emissions information for included activities relative to their operation before BACT would be applied. In this example, by subjecting the coating lines and all of the other emissions activities in the Green Group to the BACT level of control, the source has imposed additional control, not otherwise required, on the two lines otherwise subject only to SIP requirements. While the overall actual emissions from this group may increase by 100 tpy upon approval of the Green Group, the proposed increase would be subjected to BACT, and overall VOC emissions would be less by 472 tpy than the actual emissions level that would occur for the source were the Green Group level of control not in effect for the two lines previously subject to only to SIP requirements (i.e., 572 tpy over-control minus the 100 tpy increase).

The PSD application also includes a demonstration that a VOC emissions

increase of 100 tpy from Building 1 will be consistent with the PSD requirements applicable to the area. It shows that the increase, among other things, will not cause or contribute to ambient ozone in excess of the ozone NAAQS or have an adverse impact on the air quality related values associated with any Class I area.

The application also describes, as normally required under PSD permitting, how the source will demonstrate initial and ongoing compliance with the BACT emissions limits. In doing so, the source bears in mind the requirements of the other applicable requirements (NSPS subpart SSS, MACT subpart EE, and the SIP) with an eye toward streamlining these requirements, as discussed further below. For the initial VOC BACT compliance test, the source proposes to measure the control efficiency of the carbon adsorption system by testing at the inlet and outlet of the system using EPA Reference Method 25A and to verify the permanent total enclosures using EPA Reference Method 204. To assure ongoing compliance with the proposed BACT for VOC emissions, the source proposes to monitor continuously the Green Group's single emissions outlet (the carbon adsorption system stack) with a CEMS calibrated on the predominant VOC. (The same CEMS currently used for compliance purposes under the existing emissions limits.) The operating limit for this parameter (outlet concentration) will be established during the initial performance test. This monitoring system will also serve to assure that the emissions vented to the carbon adsorber do not exceed the capacity of the system (a Green Group requirement), which would result in an elevated outlet concentration. In addition, the source proposes to continuously monitor its permanent total enclosures using differential pressure gauges to demonstrate that these enclosures are at the prescribed negative pressure relative to their surroundings. The doors into the enclosures also are equipped with contact switches and electronic interlocks that automatically close the door after 15 seconds; the actual open time for each door is monitored and tracked. An operator alarm sounds if a door is open longer than 3 minutes. These types of testing and monitoring procedures are allowed under NSPS subpart SSS, MACT subpart EE, and the SIP as well.

To demonstrate compliance with the annual VOC emissions limit required for a Green Group (set, in this case, at the level of baseline actual emissions at BACT plus 100 tpy (i.e., 600 tpy VOC) as projected in the application), the

source proposes to meet the MRRT requirements for Green Groups (discussed previously) by using the concentration data from the VOC CERMS on the Building 1 carbon adsorber outlet coupled with data from a volumetric flow rate CEMS. Together these CEMS constitute a continuous emissions rate monitoring system (CERMS), which will allow a direct determination of mass emissions from this building. Total VOC emissions will be determined for each month, and the source will calculate the rolling 12-month total for comparison to the annual VOC emissions limit.

The source also proposes comprehensive recordkeeping and reporting in its PSD application. The proposed recordkeeping includes use of an automated data acquisition and handling system (DAHS) to record CEMS and CERMS readings at least once every 15 minutes and to make the necessary calculations.

After review and public comment, the permitting authority approves the proposed BACT determination, ambient air quality analysis, and compliance assurance measures. The permitting authority then issues a PSD permit to the source designating Building 1 as a Green Group.

This PSD permit provides advance approval under major NSR for the described changes within the Green Group. However, this major NSR approval does not address the requirements of the title V permitting program. Therefore, another step is needed to enable the source to proceed with these changes without any further review or approval by the permitting authority.

Under the second part of the process and (in this example) concurrent with the PSD permit application, the source submits an application for a significant permit modification of its part 70 permit. Therein the source proposes to include the advance approvals under major NSR in the title V permit so as to assure compliance with all applicable requirements relevant to the anticipated changes. To do so, this application proposes streamlined requirements to address the spectrum of changes that could occur within Building 1 and includes a streamlining demonstration and associated documentation.⁶⁸ In

⁶⁸ As explained above in section VI.A of this preamble and footnote 26, in White Paper Number 2 we interpreted our part 70 rules to allow sources to streamline multiple applicable requirements that apply to the same emissions unit(s) into a single set of requirements that assure compliance with all the subsumed applicable requirements. Sources that seek to streamline applicable requirements should submit their request as part of their title V permit

particular, the application proposes a streamlined emissions limit of 96-percent control of VOC and organic HAP emissions, to be achieved using the same control strategy proposed as BACT. The streamlining demonstration and documentation show that this 96-percent reduction level will assure compliance with all the emissions limits that could apply to any of the existing, modified, or new equipment in Building 1 (i.e., MACT subpart EE, NSPS subpart SSS, the SIP, and BACT). This demonstration accounts for the level and format of the emissions limits (all in terms of percent reduction), the associated test methods (all are consistent), the averaging time (all are consistent), and the collection of equipment across which compliance is demonstrated (all require compliance for each individual piece of equipment).

The streamlining proposal also includes streamlined monitoring, recordkeeping, and reporting requirements that assure compliance with the streamlined emissions limit at least as well as the requirements of the subsumed applicable requirements. In this case, the monitoring requirements associated with the BACT emissions limit are shown to assure compliance with the streamlined emissions limit as well as the monitoring applicable to each less-stringent emissions limit. Similarly, the recordkeeping and reporting associated with the BACT monitoring approach are appropriate for use with the streamlined limit and provide no less compliance assurance than would the recordkeeping and reporting required for any of the subsumed monitoring approaches.

In this case, where the PSD application and streamlining proposal are being prepared simultaneously, the source appropriately considered the other, non-NSR applicable requirements in its permit application for the BACT emissions limit and associated MRRT requirements so that as the BACT limit (i.e., 96 percent reduction) meshed with the streamlined requirements in the part 70 permit application. This approach simplified the streamlining proposal.

The part 70 application essentially incorporates the description contained in the PSD permit which established the Green Group. That is, it describes the baseline configuration in Building 1, as well as the types of changes that are

anticipated (mirroring the changes approved in the Green Group PSD permit). The part 70 application also identifies the streamlined requirements and all the subsumed applicable requirements implicated by the potential changes (PSD, NSPS subpart SSS, MACT subpart EE, and the SIP), and indicates that PSD authorization has been received (or is being concurrently processed). Any physical or operational changes that implicate different sets of applicable requirements would be identified as AOSs, as discussed previously in Example 2. The application proposes terms and conditions to assure compliance with the streamlined requirements. Focusing these terms and conditions on the streamlined requirements simplifies both the application and the resulting permit.

The magnitude of the authorized emissions increase under the proposed scenario(s) is bounded by the annual VOC emissions limitation for the Green Group established at the level of baseline actual emissions under BACT plus the 100 tpy VOC emissions increase approved under PSD. Thus, the permit application proposes an aggregate total of 600 tpy VOC. Note that any VOC emissions within Building 1 will count against this limitation. For purposes of this example, we have assumed that no debottlenecking effect occurs from emissions units that are not changed themselves. Traditional NSR (i.e., minor or major NSR, as applicable) continues to apply outside the Green Group.

For purposes of the Green Group (which is a single emissions unit under the PSD regulations proposed), the aggregate total emissions figure (600 tpy) included in the part 70 application fulfills the part 70 requirement that annual emissions be provided in the application for each emissions unit. However, because some of the emissions activities that are included in the Green Group are also subject to other applicable requirements (i.e., the SIP, NSPS subpart SSS, and/or MACT subpart EE), they may be considered emissions units for purposes of these requirements. As a result, the source potentially could be required to provide the annual emissions in tpy for each of these smaller emissions units in the part 70 permit. Under the part 70 rule revisions proposed (*see* proposed 40 CFR 70.5(c)(3)(iii)), for emissions units that are under an emissions cap, “tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed to determine an applicable requirement.” Thus, because the

application already stipulates that the emissions activities are subject to these other applicable requirements, there is no need for the source to include annual emissions for each of the subject emissions activities.

The source and the permitting authority then proceed through the process for a significant permit modification that involves streamlining and the incorporation of the Green Group permit (i.e., the advance approval issued under major NSR). After review and public participation, and after addressing the comments received, the permitting authority issues a revised title V permit which includes the streamlined requirements, the Green Group permit terms, and a permit shield.

The source subsequently is able to make the authorized changes in the Green Group/Building 1 without additional review or approval or permit revisions. Log entries are required if the source makes changes that cause a shift to a different AOS. Note that the notification requirements of the NSPS and MACT General Provisions continue to apply if the source adds a new line or modifies an affected source or facility within the Green Group.

VIII. What is the effect of these proposed revisions?

A. If these proposed revisions are finalized, what are the implications for approved part 70 programs?

The part 70 regulations provide, in pertinent part, that—

If part 70 is subsequently revised such that the Administrator determines that it is necessary to require a change to an approved State program, the required revisions to the program shall be submitted within 12 months of the final changes to part 70 or within such other period as authorized by the Administrator.

See 40 CFR 70.4(a); *see also* 40 CFR 70.4(i).

The revisions to the part 70 program proposed build upon the existing regulatory structure, as promulgated in 1992. For the reasons discussed above, we believe that these proposed revisions clarify the existing part 70 regulations. Our pilot experience—where we worked closely with several different States—strongly suggests that these revisions, if finalized, would likely not necessitate revisions to many approved State programs. Based on our pilot experience, however, we recognize that State programs differ, and we believe that at least some States would likely revise their current part 70 program to add sufficient authority to implement the final rule or to make current

application, identifying the proposed streamlined requirements and providing a demonstration that the streamlined requirements assure compliance with all the underlying, subsumed applicable requirements. Where the source wishes to streamline the advance approval under NSR with all other relevant applicable requirements, the same title V permit application can address both actions.

authority on flexible permits more explicit. We solicit comment on our initial position that at least some State programs would require program revisions in response to the final rule.

We intend to work closely with States and review expeditiously any documentation submitted regarding the adequacy of current part 70 programs and any proposed program revisions. Nothing precludes State and local permitting authorities from issuing flexible permits, as they may have done in the past, but they must determine if sufficient authority exists under their current operating permit program to do so. For those States that believe they lack authority under their current part 70 programs to implement the final rule, such States should submit proposed revisions to their title V operating permits program to their EPA Regional Offices within 12 months of the date of publication of the final rule in the **Federal Register**. See 40 CFR 70.4(a). For other States if, based on their subsequent efforts to implement the final rule, we determine in writing that a particular part 70 program does not provide sufficient authority to implement the final rule or is inconsistent with the final rule, then the relevant State will have 12 months from the date of our written determination to submit a proposed operating permit program consistent with the final rule to us for review and approval.

B. What are the implications for NSR programs?

We believe that Green Groups will have environmental and administrative benefits like those of PALs. Accordingly, we propose that the Green Groups, like PALs, should be a mandatory program element. When the Green Group provisions are finalized, this will require revisions to SIPs or a demonstration that adequate authority already exists.

By "mandatory program element," we mean that SIPs must include provisions providing for the issuance of major NSR permits with Green Group designations. However, a Green Group would be an option that a source may, or may not, choose to seek. In addition, a permitting authority would have discretion as to whether or not to issue a Green Group permit based on the particulars of each individual case.

Where States and local agencies would need implementation plan revisions to be able to issue permits establishing Green Groups, they must adopt and submit revisions to their part 51 permitting programs implementing these minimum program elements no later than 3 years from the date of

publication in the **Federal Register** of the final Green Group regulations in 40 CFR 51.165 and 51.166. In any area for which we are the reviewing authority, or for which we have delegated our authority to issue permits to State or local permitting authorities, the changes would take effect 60 days from the date of publication in the **Federal Register** of the final Green Group regulations in 40 CFR 52.21.

As we noted in the NSR improvements adopted in 2002, State and local jurisdictions have significant freedom to customize their NSR programs (67 FR 80241). Ever since our current NSR regulations were adopted in 1980, we have taken the position that States may meet the requirements of part 51 "with different but equivalent regulations." See 45 FR 52676.

During the interim period between this proposal and finalization of the proposed rules, we believe that certain major NSR permits with features similar to a Green Group designation could be approved under our existing federal PSD regulations at 40 CFR 52.21. Such permits would have to abide by the existing regulations, including the restrictions at 40 CFR 52.21(r)(2) and (j)(4), which would differ from this proposal for Green Groups. Because of the benefits we believe Green Groups bring, we invite States to whom we have delegated the federal PSD program, as well as States implementing their own EPA-approved major NSR programs, to work with us on a case-by-case basis within the constraints of existing regulations to determine whether and to what extent Green Group-like permits may be available in this interim period.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. 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

This proposed rule would revise several existing rules. The current information collection requirements of

those rules are contained in three different Information Collection Requests (ICRs). The Office of Management and Budget (OMB) has approved the information collection requirements for parts 70 and 71 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The currently approved ICR for part 70 is assigned ICR number 1587.06 and OMB number 2060-0243; for part 71, the ICR number is 1713.05 and the OMB number is 2060-0336. Similarly, OMB has approved information collection requirements for parts 51 and 52 that govern the State and Federal programs for preconstruction review and permitting of major new and modified sources pursuant to part C (PSD) and part D (nonattainment major NSR) of title I of the CAA. The currently approved ICR for parts 51 and 52 is assigned ICR number 1230.17 and OMB number 2060-0003.

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The ICR documents prepared by EPA have been assigned EPA ICR numbers 1587.08, 1713.07, and 1230.20.

The total economic impact of the proposed Flexible Air Permitting Rule over the three-year term of the ICR is estimated to be \$36 million in cost savings for sources with a burden reduction of approximately 943,000 labor hours; \$19 million in cost savings for permitting authorities with a burden reduction of approximately 514,000 labor hours; and costs of \$1.4 million with an increase in burden of approximately 37,000 labor hours for EPA.

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: (1) Review instructions; (2) 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; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) 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 are listed in 40 CFR part 9 and 48 CFR Chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-OAR-2004-0087. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after September 12, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by October 12, 2007. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have "a significant economic impact on a substantial number of small entities." Small entities include small businesses, small organizations, and small government jurisdictions.

For purposes of assessing the impacts of this proposal on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This proposed rule would merely clarify existing requirements and allow regulated entities to seek additional flexibility for their Clean Air Act permits, and would not create a new burden for regulated entities. We have determined there will be cost savings for small entities associated with these proposed revisions. After considering

the economic impact of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

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, 2 U.S.C. 1532, we generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more * * * in any one year." A "Federal mandate" is defined to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." 2 U.S.C. 658(6). A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance." 2 U.S.C. 658(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions [2 U.S.C. 658(7)(A)].

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 where they are inconsistent with applicable law. Moreover, section 205 allows us 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 we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined under the regulatory provisions of title II of the UMRA that this proposed rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed rule is estimated to save State, local, and tribal permitting authorities over \$5 million and to result in an administrative burden reduction of 135,000 hours. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

In addition, we have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. We expect any impact will act to lower overall administrative burden to these entities. Therefore, this proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us 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, or on the distribution of power and responsibilities among the various levels of government."

This proposal does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal should result in cost savings and administrative burden reductions for States and will not alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs or for the part 51 and part 51 NSR programs. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with our policy to

promote communication between us and State and local governments, we specifically solicit 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 us 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."

These proposed rule revisions do not have tribal implications because they will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of Executive Order 13175 do not apply to these proposed rule revisions. We solicit comments from Indian tribal governments on the proposed rule.

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

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is

not a significant regulatory action under Executive Order 12866.

This proposed rule is not a "significant energy action," as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As noted earlier, this action would simply clarify existing requirements and would not impose any new requirements, and thus would not affect the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, directs us 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 bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this proposed rule because it does not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 28, 2007.

Stephen L. Johnson,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

2. Section 51.165 is amended as follows:

- a. By adding paragraph (a)(1)(v)(G);
- b. By revising paragraph (a)(1)(xii)(A);
- c. By revising paragraph (a)(1)(xxxv)(D);
- d. By revising paragraph (a)(2)(ii)(A);
- e. By adding paragraph (a)(2)(v);
- f. By revising paragraph (a)(6) introductory text; and
- g. By adding paragraph (i).

The additions and revisions read as follows:

§ 51.165 Permit requirements.

- (a) * * *
- (1) * * *
- (v) * * *

(G) This definition shall not apply to approved physical changes or changes in the method of operation within a Green Group with respect to any Green Group pollutant when the major stationary source is complying with the requirements under paragraph (i) of this section for a Green Group for that pollutant.

* * * * *

(xii)(A) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (a)(1)(xii)(B) through (D) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (f) of this section or a Green Group under paragraph (i) of this section. Instead, paragraphs (a)(1)(xxviii) and (xxxv) of this section shall apply for those purposes.

* * * * *

(xxxv) * * *

(D) For a PAL or Green Group for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (a)(1)(xxxv)(A) of this section, for other existing emissions units in accordance with the

procedures contained in paragraph (a)(1)(xxxv)(B) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (a)(1)(xxxv)(C) of this section.

* * * * *

(2) * * *
(ii) * * *

(A) Except as otherwise provided in paragraphs (a)(2)(iii) through (v) of this section, and consistent with the definition of major modification contained in paragraph (a)(1)(v)(A) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (a)(1)(xxvii) of this section), and a significant net emissions increase (as defined in paragraphs (a)(1)(vi) and (x) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

* * * * *

(v) The plan shall require that for any major stationary source with a Green Group for a regulated NSR pollutant, the owner or operator shall comply with the requirements in paragraph (i) of this section for those emissions activities included within the Green Group.

* * * * *

(6) Each plan shall provide that the following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a Green Group or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (a)(1)(xxviii)(B)(1) through (3) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(6)(i) through (v) of this section.

* * * * *

(i) *Green Groups*. The plan shall provide for Green Groups according to the provisions in paragraphs (i)(1) through (17) of this section.

(1) *Applicability*. The reviewing authority may issue a permit under regulations approved pursuant to this section designating a Green Group at

any existing major stationary source if the permit contains terms and conditions assuring that the Green Group meets the requirements in paragraphs (i)(1) through (17) of this section.

(i) *Changes at a Green Group*. Any physical change in or change in the method of operation authorized for a Green Group pursuant to the requirements in paragraphs (i)(1) through (17) of this section that maintains the Green Group's total emissions at or below the Green Group emissions limit and maintains the Green Group's compliance with its LAER limit(s):

(A) Is not a major modification for the Green Group pollutant; and

(B) Does not have to be approved through the plan's nonattainment major NSR program.

(ii) *Prior requirements*. A major stationary source shall continue to comply with all remaining applicable Federal or State requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the Green Group.

(2) *Definitions*. The plan shall use the definitions in paragraphs (i)(2)(i) through (iv) of this section for the purpose of developing and implementing regulations that authorize the use of Green Groups consistent with paragraphs (i)(1) through (17) of this section. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (a)(1) or (f) of this section or in the Act.

(i) *Green Group* means a group of new and/or existing emissions activities that is characterized by use of a common, dedicated air pollution control device and that has been designated as a Green Group by the reviewing authority in a permit issued under regulations approved pursuant to this section. A Green Group is a single emissions unit for purposes of this section.

(ii) *Green Group pollutant* means a pollutant emitted from the emissions activities that comprise the Green Group and for which a Green Group is designated at a major stationary source.

(iii) *Green Group permit* means the major NSR permit issued by the reviewing authority that establishes a Green Group for a major stationary source.

(iv) *Green Group emissions limit* means an emissions limitation for the Green Group pollutant, expressed in tons per year, that is enforceable as a practical matter and established for a Green Group at a major stationary source in accordance with paragraphs (i)(1) through (17) of this section.

(3) *Permit application requirements*. The owner or operator of a major stationary source must request approval for a Green Group in an application for a major NSR permit that meets the requirements of this section, as applicable, and of sections 172(c)(5) and 173 of the Act. As part of a permit application requesting a Green Group, the owner or operator of a major stationary source shall submit the following information to the reviewing authority for approval:

(i) *List of designated emissions activities*. A list of the emissions activities proposed for inclusion in the Green Group. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emissions limitations, or work practices apply to each activity.

(ii) *Baseline actual emissions*. Calculations of the baseline actual emissions from included emissions activities (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the activity, but also emissions associated with startup, shutdown, and malfunction.

(iii) *Monitoring data conversion procedures*. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (i)(15)(i) of this section.

(iv) *Description*. A description of the equipment that comprises the Green Group, including a description of existing emissions activities, proposed physical changes or changes in method of operation (which may include the addition of new emissions activities), and the common air pollution control device. The description must provide information about maximum total emissions that will be generated by the Green Group's emissions activities and the associated characteristics of the combined emissions streams (including the worst-case emissions stream) that will be ducted to the common air pollution control device. The description must be sufficient:

(A) To allow the reviewing authority to distinguish changes proposed to be authorized in the Green Group from unauthorized changes; and

(B) To enable the reviewing authority to determine LAER for the Green Group consistent with paragraphs (i)(4)(ii) and (i)(7)(v) of this section.

(v) *Control technology demonstration*. A demonstration that the proposed

control technology represents LAER. Such a demonstration shall confirm that the emissions reduction capacity of the proposed common control device is sufficient to meet the relevant emissions reduction requirement, considering the maximum total emissions from the Green Group and the associated characteristics of the combined emissions streams that will be ducted to the common air pollution control device. The LAER demonstration shall be based on worst-case emissions from the new and existing emissions activities authorized for the Green Group.

(vi) *Monitoring system.* A proposed monitoring system sufficient to meet the requirements of paragraph (i)(13) of this section with respect to Green Group emissions limit(s) and the requirements of paragraph (i)(14) of this section with respect to LAER-related limitations.

(vii) *Proposed Green Group emissions limit.* The proposed Green Group emissions limit, in tons per year, with supporting documentation including, but not limited to, the following:

(A) Baseline actual emissions of existing emissions activities proposed to be included in the Green Group, adjusted to reflect the application of LAER; and

(B) The amount of emissions growth proposed for the Green Group as the result of the proposed physical, operational, and other changes.

(4) *General requirements for designating a Green Group.* The plan shall provide that the reviewing authority may designate a Green Group at an existing major stationary source through issuance of a nonattainment major NSR permit under regulations approved pursuant to this section, provided that in addition the requirements in paragraphs (i)(4)(i) through (vii) of this section are met.

(i) *Green Group emissions limit.* The reviewing authority, consistent with regulations approved pursuant to paragraph (i)(6) of this section, shall establish a Green Group emissions limit in tons per year for those emissions activities included under the Green Group (including any new emissions activities added within the Green Group). For each month during the Green Group effective period after the first 12 months of establishing the Green Group, the major stationary source owner or operator shall show that the sum of the monthly emissions from each included emissions activity for the previous 12 consecutive months is less than or equal to the Green Group emissions limit (i.e., a 12-month total, rolled monthly). For each month during the first 11 months from the Green

Group effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the Green Group effective date for each emissions activity under the Green Group is less than or equal to the Green Group emissions limit.

(ii) *LAER emissions limit.* The reviewing authority shall determine LAER for the emissions of the Green Group pollutant from the group of emissions activities designated as a Green Group. The LAER emissions limit shall ensure that the emissions of the emissions activities included in the Green Group are ducted to a common, dedicated air pollution control device. The control device, in combination with any additional control measures consistent with paragraphs (i)(4)(ii)(A) and (B) of this section, must achieve the LAER level of emissions reductions for the Green Group pollutant.

(A) In addition to the requirement to duct emissions from the Green Group to a common air pollution control device, additional control measures such as pollution prevention (as defined under paragraph (a)(1)(xxvi) of this section), work practices, and/or operational standards may be defined as part of the approved control measures.

(B) Pollution prevention measures that have been determined to represent LAER may be approved to apply during certain periods of operation. The included emissions activities must have ductwork extending to the common air pollution control device, but the owner or operator would be allowed to bypass the control device during periods when the pollution prevention alternative is in use, consistent with the LAER determination. Emissions activities that exclusively use the pollution prevention alternative and never use the common air pollution control device may not be included in the Green Group.

(iii) *Permit content.* The Green Group permit shall contain all the requirements of paragraph (i)(7) of this section.

(iv) *Included emissions.* The Green Group emissions limit shall include fugitive emissions of the Green Group pollutant, to the extent quantifiable, from all emissions activities included under the Green Group.

(v) *Regulated pollutant.* Each Green Group shall regulate emissions of only one pollutant. However, the same collection of emissions activities may be designated separately as a Green Group for another pollutant.

(vi) *Effective period.* Each Green Group designation shall have an effective period of 10 years.

(vii) *Monitoring, recordkeeping, and reporting.* The Green Group permit shall require the owner or operator to comply with the monitoring, recordkeeping, and reporting requirements in paragraphs (i)(13) through (16) of this section for each included emissions activity.

(5) *General provisions for Green Groups.* The plan shall require that the provisions set out in paragraphs (i)(5)(i) through (iv) of this section apply to Green Groups:

(i) Any project for which the owner or operator begins actual construction after the effective date of a Green Group designation and before its expiration date will be considered to have occurred while the emissions unit was a Green Group.

(ii) At no time (during or after the Green Group effective period) are emissions reductions of a Green Group pollutant that occur during the Green Group effective period creditable as decreases for purposes of offsets under paragraph (a)(3)(ii) of this section unless the Green Group emissions limit is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the Green Group designation. No emissions reduction credit can be generated for emissions growth that was authorized under the Green Group permit, but never realized.

(iii) At no time (during or after the Green Group effective period) are emissions increases or reductions of a Green Group pollutant that occur during the Green Group effective period creditable for purposes of calculating a net emissions increase under paragraph (a)(1)(vi) of this section (that is, must not be used in a "netting analysis"), unless the Green Group emissions limit is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the Green Group designation. No emissions reduction credit can be generated for emissions growth that was authorized under the Green Group permit, but never realized.

(iv) The Green Group designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Green Group is located in an attainment area and the area is redesignated to nonattainment, its Green Group designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Green Group designation. However, if an existing Green Group designation expires, it must re-qualify under the requirements that are currently applicable in the area.

(6) *Setting the 10-year Green Group emissions limit.* The plan shall provide that the Green Group emissions limit is to be established as follows:

(i) Except as provided in paragraphs (i)(6)(ii) through (iv) of this section, the Green Group emissions limit shall be established as the sum of the baseline actual emissions (as defined in paragraph (a)(1)(xxv) of this section) of the Green Group pollutant for each emissions activity included in the Green Group. When establishing the Green Group emissions limit, for a Green Group pollutant, a single period of 24 consecutive months must be used to determine the baseline actual emissions for all existing emissions activities. However, a different period of 24 consecutive months may be used for each different Green Group pollutant. Emissions associated with activities that were permanently shut down after this 24-month period must be subtracted from the Green Group emissions limit. The reviewing authority shall specify a reduced Green Group emissions limit(s) (in tons/yr) in the Green Group permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the Green Group permit.

(ii) For activities (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (i)(6)(i) of this section, the emissions must be added to the Green Group emissions limit in an amount equal to the potential to emit of the activities.

(iii) The reviewing authority shall establish the Green Group emissions level by adjusting the total derived according to paragraphs (i)(6)(i) and (ii) of this section to reflect:

(A) The application of LAER; and

(B) An additional amount of actual emissions consistent with the growth approved for the Green Group.

(7) *Content of the Green Group permit.* The plan shall require that the Green Group permit contain the elements listed in paragraphs (i)(7)(i) through (xiii) of this section and any other provisions that the reviewing authority deems necessary to implement the Green Group.

(i) The Green Group pollutant.

(ii) A description of the equipment that comprises the Green Group, including a description of existing emissions activities, any authorized physical changes or changes in method of operation, and the common air pollution control device. The

description must provide information about the maximum total emissions that will be generated by the Green Group's emissions activities and the associated characteristics of the combined emissions streams that will be ducted to the common air pollution control device. The description must be sufficient to distinguish, when a change is subsequently made in the Green Group, whether that change was authorized under the Green Group permit.

(iii) A statement designating the described equipment as a Green Group.

(iv) The Green Group emissions limit (in terms of a 12-month total, rolled monthly) for the group of emissions activities included under the Green Group.

(v) All emissions limitations and work practice requirements established to ensure that LAER is met.

(vi) The Green Group effective date and the expiration date of the Green Group (i.e., the Green Group effective period). If the source owner or operator must construct a new air pollution control device or modify an existing device as a result of the LAER determination for the Green Group, the permit may provide that the existing emissions activities within the Green Group are not required to meet the LAER emissions limitation(s) or the Green Group emissions limit until the new or modified air pollution control device is in operation. (That is, such emissions activities may continue to meet pre-existing emissions limitations until that time.) However, new and modified emissions activities within the Green Group must be subject to LAER upon startup. In addition, the Green Group must be subject to the Green Group emissions limit (and associated monitoring, recordkeeping, and reporting requirements) beginning at the time that the new or modified air pollution control device is placed in operation.

(vii) Specification in the Green Group permit that if a major stationary source owner or operator applies to renew a Green Group in accordance with paragraph (i)(11) of this section before the end of the effective period, then the Green Group shall not expire at the end of the effective period. It shall remain in effect until a new Green Group permit is issued by the reviewing authority.

(viii) A requirement that emissions calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(ix) A requirement that, once the Green Group expires, the major stationary source is subject to the

requirements of paragraph (i)(10) of this section.

(x) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by paragraph (i)(15)(i) of this section.

(xi) A requirement that the major stationary source owner or operator meet all applicable requirements for monitoring, testing, and operation in accordance with the provisions of paragraphs (i)(13) and (14) of this section.

(xii) A requirement to retain the records required under paragraph (i)(15) of this section on site. Such records may be retained in an electronic format.

(xiii) A requirement to submit the reports required under paragraph (i)(16) of this section by the required deadlines.

(8) *Green Group effective period.* The plan shall require that the reviewing authority specify an effective period of 10 years. The effective period begins upon the Green Group effective date, which is the date that the Green Group permit becomes effective.

(9) *Reopening of the Green Group permit.* The plan shall provide that the requirements in paragraphs (i)(9)(i) through (iii) of this section apply to reopening Green Group permits.

(i) *Mandatory reopenings.* During the Green Group effective period, the reviewing authority must reopen the Green Group permit to:

(A) Correct typographical/calculation errors made in setting the Green Group emissions limit or reflect a more accurate determination of emissions used to establish this limit;

(B) Reduce the Green Group emissions limit if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under paragraph (a)(3)(ii) of this section; and

(C) Reduce the Green Group emissions limit if the owner or operator of the major stationary source creates creditable emissions reductions for use in a netting analysis under paragraph (a)(1)(vi) of this section.

(ii) *Discretionary reopenings.* The reviewing authority shall have discretion to reopen the Green Group permit for the purposes listed in paragraphs (i)(9)(ii)(A) through (C) of this section. If the reviewing authority declines to reopen the Green Group permit for any of these purposes, the Green Group emissions limit must be adjusted upon expiration of the Green Group designation or upon renewal of the source's title V permit, whichever

comes first. The major stationary source owner or operator is responsible for compliance with any new applicable requirements, regardless of when the permit is reopened and adjusted.

(A) To reduce the Green Group emissions limit to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the Green Group effective date;

(B) To reduce the emissions limit consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

(C) To reduce the emissions limit if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) *Required process.* Except for the permit reopening in paragraph (i)(9)(i)(A) of this section for the correction of typographical/calculation errors that do not increase the Green Group emissions limit, all other reopenings shall be carried out in accordance with the full public participation requirements for major NSR permitting under the regulations approved pursuant to this section.

(10) *Expiration of a Green Group.* The plan shall require that any Green Group designation that is not renewed in accordance with the procedures in paragraph (i)(11) of this section shall expire at the end of its effective period. After expiration of the Green Group designation, the following provisions apply:

(i) The emissions unit defined by the Green Group remains an emissions unit for purposes of major NSR and remains subject to the LAER control requirements; Green Group emissions limit; any shorter-term emissions limits; and monitoring, recordkeeping, reporting, and testing requirements imposed by the Green Group permit.

(ii) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (LAER, RACT, NSPS, etc.) that may have applied either during or prior to the Green Group effective period.

(iii) Any subsequent physical change or change in the method of operation at the emissions unit defined by the Green Group will be subject to nonattainment major NSR requirements if such change meets the definition of major

modification in paragraph (a)(1)(v) of this section.

(11) *Renewal of a Green Group.* The plan shall require that the following provisions apply to renewal of a Green Group:

(i) *Required procedures.* A Green Group may be renewed through issuance of a new major NSR permit according to all the requirements of this paragraph (i) for the initial Green Group designation.

(ii) *Application deadline.* A major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a Green Group. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date that the Green Group designation would otherwise expire. This deadline for application submittal is to ensure that the Green Group designation will not expire before the Green Group is renewed. If the owner or operator of a major stationary source submits a complete application to renew the Green Group within this time period, then the Green Group shall continue to be effective until the new nonattainment major NSR permit with the renewed Green Group is issued.

(12) *Increasing a Green Group emissions limit during its effective period.* The plan shall provide that the reviewing authority may increase a Green Group emissions limit during its effective period only if the increase is contained in a new permit incorporating the increase into a new Green Group consistent with the requirements of the regulations approved pursuant to this section.

(13) *Monitoring requirements for Green Group emissions limitations.* The plan shall provide that the following monitoring requirements apply to Green Groups.

(i) *General requirements.*

(A) Each Green Group permit must contain enforceable requirements for the monitoring system that accurately determines, in terms of mass per unit of time, emissions of the Green Group pollutant from the emissions activities under the Green Group. Any monitoring system authorized for use in the Green Group permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the Green Group permit.

(B) The Green Group monitoring system must employ one or more of the four general monitoring approaches

meeting the minimum requirements set forth in paragraphs (i)(13)(i)(A) through (D) of this section and must be approved by the reviewing authority.

(C) Notwithstanding paragraph (i)(13)(i)(B) of this section, you may also employ an alternative monitoring approach that meets paragraph (i)(13)(i)(A) of this section if approved by the reviewing authority.

(D) Failure to use a monitoring system that meets the requirements of this section renders the Green Group invalid.

(ii) *Minimum performance requirements for approved monitoring approaches.* The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (i)(13)(iii) through (ix) of this section:

(A) Mass balance calculations for activities using coatings or solvents;

(B) CEMS;

(C) CPMS or PEMS; and

(D) Emissions factors.

(iii) *Mass balance calculations.* An owner or operator using mass balance calculations to monitor the Green Group pollutant emissions from activities using coating or solvents shall meet the following requirements:

(A) Provide a demonstrated means of validating the published content of the Green Group pollutant that is contained in or created by all materials used in or at the emissions activity;

(B) Assume that the emissions activity emits all of the Green Group pollutant that is contained in or created by any raw material or fuel used in or at the emissions activity, if it cannot otherwise be accounted for in the process; and

(C) Where the vendor of a material or fuel, which is used in or at the emissions activity, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the Green Group pollutant emissions unless the reviewing authority determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) *CEMS.* An owner or operator using CEMS to monitor Green Group pollutant emissions shall meet the following requirements:

(A) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(B) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions activity is operating.

(v) *CPMS or PEMS*. An owner or operator using CPMS or PEMS to monitor Green Group pollutant emissions shall meet the following requirements:

(A) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the Green Group pollutant emissions across the range of operation of the emissions activity; and

(B) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the reviewing authority, while the emissions activity is operating.

(vi) *Emissions factors*. An owner or operator using emissions factors to monitor Green Group pollutant emissions shall meet the following requirements:

(A) All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(B) The emissions activity shall operate within the designated range of use for the emissions factor, if applicable; and

(C) If technically practicable, the owner or operator of a significant or major emissions activity that relies on an emissions factor to calculate Green Group pollutant emissions shall conduct validation through performance testing or other scientifically valid means approved by the reviewing authority to determine a site-specific emissions factor. Such testing or other means shall occur within 6 months of Green Group permit issuance.

(vii) *Missing data procedures*. A source owner or operator must record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions activity during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the Green Group permit.

(viii) *Alternative requirements*. Notwithstanding the requirements in paragraphs (i)(13)(iii) through (vii) of this section, where an owner or operator of an emissions activity cannot demonstrate a correlation between the monitored parameter(s) and the Green Group pollutant emissions rate at all operating points of the emissions activity, the reviewing authority shall, at the time of permit issuance:

(A) Establish default value(s) for determining compliance with the Green Group emissions limit based on the

highest potential emissions reasonably estimated at such operating point(s); or

(B) Determine that operation of the emissions activity during operating conditions when there is no correlation between monitored parameter(s) and the Green Group pollutant emissions is a violation of the Green Group emissions limit.

(ix) *Re-validation*. All data used to establish the Green Group pollutant emissions must be re-validated through performance testing or other scientifically valid means approved by the reviewing authority. Such testing must occur at least once every 5 years after issuance of the Green Group.

(14) *Additional monitoring requirements for LAER*. The plan shall provide that the permit must also require the owner or operator with a Green Group to monitor, measure, and record data sufficient to determine whether:

(i) The emissions reduction measures (including the Green Group air pollution control device) meet the emissions limitations and/or work practice requirements adopted in conjunction with LAER; and

(ii) The demonstrated capacity of the Green Group air pollution control device was exceeded by the emissions stream(s) directed to it at any time during the reporting period. The capacity of the control device is considered exceeded if the characteristics of the emissions stream entering the device are outside the range for which it has been demonstrated that the device can achieve LAER, absent valid monitoring data (from a continuous monitoring system or other monitoring approach approved for such use by the reviewing authority) showing compliance with LAER at the new operating level. A period of exceedance is considered a deviation for purposes of recordkeeping and reporting.

(15) *Recordkeeping requirements*. The plan shall require that the following recordkeeping requirements apply to Green Groups:

(i) *Records to determine compliance*. The Green Group permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (i) of this section and of the Green Group permit, including a determination of each emissions activity's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) *Other records*. The Green Group permit shall require an owner or operator to retain a copy of the following records for the duration of the

Green Group effective period plus 5 years:

(A) A copy of the Green Group permit application and any applications for revisions to the Green Group permit; and

(B) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(16) *Reporting and notification requirements*. The plan shall require the owner or operator to submit semi-annual monitoring reports and prompt deviation reports to the reviewing authority in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (i)(16)(i) through (iii) of this section.

(i) *Semi-annual report*. The semi-annual report shall be submitted to the reviewing authority within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (i)(16)(i)(A) through (G) of this section.

(A) The identification of owner and operator and the permit number.

(B) Total annual emissions (tons per year) from the emissions activities included under the Green Group, based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (i)(15)(i) of this section.

(C) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual Green Group pollutant emissions.

(D) A list of any emissions activities included under the Green Group that were added during the preceding 6-month period.

(E) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(F) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions activity monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by the method included in the permit, as provided by paragraph (i)(13)(vii) of this section.

(G) A signed statement by the responsible official (as defined by the applicable title V operating permit

program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) *Deviation report.* The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the Green Group emissions limit or emissions reduction requirement (e.g., LAER limit), including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

(A) The identification of owner and operator and the permit number;

(B) The Green Group requirement that experienced the deviation or that was exceeded;

(C) Emissions resulting from the deviation or the exceedance; and

(D) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) *Re-validation results.* The owner or operator shall submit to the reviewing authority the results of any re-validation test or method within 3 months after completion of such test or method.

(17) *Transition requirements.* The plan shall provide that the reviewing authority may not issue a Green Group permit that does not comply with the requirements in paragraphs (i)(1) through (17) of this section or their equivalent after the Administrator has approved regulations incorporating these requirements into the plan. The plan shall provide that the reviewing authority may supersede any Green Group permit that was established prior to the date of approval of the plan by the Administrator with a Green Group permit that complies with the requirements of paragraphs (i)(1) through (17) of this section.

3. Section 51.166 is amended as follows:

- a. By revising paragraph (a)(7)(iv)(a);
- b. By adding paragraph (a)(7)(vii);
- c. By adding paragraph (b)(2)(v);
- d. By revising paragraph (b)(21)(i);
- e. By revising paragraph (b)(47)(iv);
- f. By revising paragraph (r)(6) introductory text; and
- g. By adding paragraph (z).

The additions and revisions read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(a) * * *

(7) * * *

(iv) * * *

(a) Except as otherwise provided in paragraphs (a)(7)(v) through (vii) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(39) of this section), and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

* * * * *

(vii) The plan shall require that for any major stationary source with a Green Group for a regulated NSR pollutant, the owner or operator shall comply with the requirements in paragraph (z) of this section for those emissions activities included within the Green Group.

* * * * *

(b) * * *

(2) * * *

(v) This definition shall not apply to approved physical changes or changes in the method of operation within a Green Group with respect to any Green Group pollutant when the major stationary source is complying with the requirements under paragraph (z) of this section for a Green Group for that pollutant.

* * * * *

(21)(i) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(21)(ii) through (iv) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (w) of this section or a Green Group under paragraph (z) of this section. Instead, paragraphs (b)(40) and (b)(47) of this section shall apply for those purposes.

* * * * *

(47) * * *

(iv) For a PAL or Green Group for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(47)(i) of this

section, for other existing emissions units in accordance with the procedures contained in paragraph (b)(47)(ii) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (b)(47)(iii) of this section.

* * * * *

(r) * * *

(6) Each plan shall provide that the following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a Green Group or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(40)(ii)(a) through (c) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (r)(6)(i) through (v) of this section.

* * * * *

(z) *Green Groups.* The plan shall provide for Green Groups according to the provisions in paragraphs (z)(1) through (17) of this section.

(1) *Applicability.* The reviewing authority may issue a permit under regulations approved pursuant to this section designating a Green Group at any existing major stationary source if the permit contains terms and conditions assuring that the Green Group meets the requirements in paragraphs (z)(1) through (17) of this section.

(i) *Changes at a Green Group.* Any physical change in or change in the method of operation authorized for a Green Group pursuant to the requirements in paragraphs (z)(1) through (17) of this section that maintains the Green Group's total emissions at or below the Green Group emissions limit and maintains the Green Group's compliance with its best available control technology (BACT) limit(s):

(a) Is not a major modification for the Green Group pollutant;

(b) Does not have to be approved through the plan's PSD program; and

(c) Is not subject to the provisions of paragraph (j)(4) of this section.

(ii) *Prior requirements.* Except as provided under paragraph (z)(1)(i)(c) of this section, a major stationary source shall continue to comply with all remaining applicable Federal or State

requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the Green Group.

(2) *Definitions.* The plan shall use the definitions in paragraphs (z)(2)(i) through (iv) of this section for the purpose of developing and implementing regulations that authorize the use of Green Groups consistent with paragraphs (z)(1) through (17) of this section. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) or (aa) of this section or in the Act.

(i) *Green Group* means a group of new and/or existing emissions activities that is characterized by use of a common, dedicated air pollution control device and that has been designated as a Green Group by the reviewing authority in a permit issued under regulations approved pursuant to this section. A Green Group is a single emissions unit for purposes of this section.

(ii) *Green Group pollutant* means a pollutant emitted from the emissions activities that comprise the Green Group and for which a Green Group is designated at a major stationary source.

(iii) *Green Group permit* means the major NSR permit issued by the reviewing authority that establishes a Green Group for a major stationary source.

(iv) *Green Group emissions limit* means an emissions limitation for the Green Group pollutant, expressed in tons per year, that is enforceable as a practical matter and established for a Green Group at a major stationary source in accordance with paragraphs (z)(1) through (17) of this section.

(3) *Permit application requirements.* The owner or operator of a major stationary source must request approval for a Green Group in an application for a major NSR permit that meets the requirements of paragraphs (j) through (r)(5) of this section, as applicable. As part of a permit application requesting a Green Group, the owner or operator of a major stationary source shall submit the following information to the reviewing authority for approval:

(i) *List of designated emissions activities.* A list of the emissions activities proposed for inclusion in the Green Group. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emissions limitations, or work practices apply to each activity.

(ii) *Baseline actual emissions.* Calculations of the baseline actual emissions from included emissions activities (with supporting documentation). Baseline actual

emissions are to include emissions associated not only with operation of the activity, but also emissions associated with startup, shutdown, and malfunction.

(iii) *Monitoring data conversion procedures.* The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (z)(15)(i) of this section.

(iv) *Description.* A description of the equipment that comprises the Green Group, including a description of existing emissions activities, proposed physical changes or changes in method of operation (which may include the addition of new emissions activities), and the common air pollution control device. The description must provide information about maximum total emissions that will be generated by the Green Group's emissions activities and the associated characteristics of the combined emissions streams (including the worst-case emissions stream) that will be ducted to the common air pollution control device. The description must be sufficient:

(a) To allow the reviewing authority to distinguish changes proposed to be authorized in the Green Group from unauthorized changes; and

(b) To enable the reviewing authority to determine BACT for the Green Group consistent with paragraphs (z)(4)(ii) and (z)(7)(vi) of this section.

(v) *Control technology demonstration.* A demonstration that the proposed control technology represents BACT. Such a demonstration shall confirm that the emissions reduction capacity of the proposed common control device is sufficient to meet the relevant emissions reduction requirement, considering the maximum total emissions from the Green Group and the associated characteristics of the combined emissions streams that will be ducted to the common air pollution control device. The BACT demonstration shall be based on worst-case emissions from the new and existing emissions activities authorized for the Green Group.

(vi) *Monitoring system.* A proposed monitoring system sufficient to meet the requirements of paragraph (z)(13) of this section with respect to Green Group emissions limit(s) and the requirements of paragraph (z)(14) of this section with respect to BACT-related limitations.

(vii) *Proposed Green Group emissions limit.* The proposed Green Group emissions limit, in tons per year, with

supporting documentation including, but not limited to, the following:

(a) Baseline actual emissions of existing emissions activities proposed to be included in the Green Group, adjusted to reflect the application of BACT; and

(b) The amount of emissions growth proposed for the Green Group as the result of the proposed physical, operational, and other changes.

(4) *General requirements for designating a Green Group.* The plan shall provide that the reviewing authority may designate a Green Group at an existing major stationary source through issuance of a PSD permit under regulations approved pursuant to this section, provided that in addition, at a minimum, the requirements in paragraphs (z)(4)(i) through (vii) of this section are met.

(i) *Green Group emissions limit.* The reviewing authority, consistent with regulations approved pursuant to paragraph (z)(6) of this section, shall establish a Green Group emissions limit in tons per year for those emissions activities included under the Green Group (including any new emissions activities added within the Green Group). For each month during the Green Group effective period after the first 12 months of establishing the Green Group, the major stationary source owner or operator shall show that the sum of the monthly emissions from each included emissions activity for the previous 12 consecutive months is less than or equal to the Green Group emissions limit (i.e. a 12-month total, rolled monthly). For each month during the first 11 months from the Green Group effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the Green Group effective date for each emissions activity under the Green Group is less than or equal to the Green Group emissions limit.

(ii) *BACT emissions limit.* The reviewing authority shall determine BACT for the emissions of the Green Group pollutant from the group of emissions activities designated as a Green Group. The BACT emissions limit shall ensure that the emissions of the emissions activities included in the Green Group are ducted to a common, dedicated air pollution control device and ensure compliance with any applicable emissions limitation under the State Implementation Plan and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61. The control device, in combination with any additional control measures consistent with paragraphs

(z)(4)(ii)(a) and (b) of this section, must achieve the BACT level of emissions reductions for the Green Group pollutant.

(a) In addition to the requirement to duct emissions from the Green Group to a common air pollution control device, additional control measures such as pollution prevention (as defined under paragraph (b)(38) of this section), work practices, and/or operational standards may be defined as part of the approved control measures.

(b) Pollution prevention measures that have been determined to represent BACT may be approved to apply during certain periods of operation. The included emissions activities must have ductwork extending to the common air pollution control device, but the owner or operator would be allowed to bypass the control device during periods when the pollution prevention alternative is in use, consistent with the BACT determination. Emissions activities that exclusively use the pollution prevention alternative and never use the common air pollution control device may not be included in the Green Group.

(iii) *Permit content.* The Green Group permit shall contain all the requirements of paragraph (z)(7) of this section.

(iv) *Included emissions.* The Green Group emissions limit shall include fugitive emissions of the Green Group pollutant, to the extent quantifiable, from all emissions activities included under the Green Group.

(v) *Regulated pollutant.* Each Green Group shall regulate emissions of only one pollutant. However, the same collection of emissions activities may be designated separately as a Green Group for another pollutant.

(vi) *Effective period.* Each Green Group designation shall have an effective period of 10 years.

(vii) *Monitoring, recordkeeping, and reporting.* The Green Group permit shall require the owner or operator to comply with the monitoring, recordkeeping, and reporting requirements in paragraphs (z)(13) through (16) of this section for each included emissions activity.

(5) *General provisions for Green Groups.* The plan shall require that the provisions set out in paragraphs (z)(5)(i) through (iv) apply to Green Groups:

(i) Any project for which the owner or operator begins actual construction after the effective date of a Green Group designation and before its expiration date will be considered to have occurred while the emissions unit was a Green Group.

(ii) At no time (during or after the Green Group effective period) are emissions reductions of a Green Group

pollutant that occur during the Green Group effective period creditable as decreases for purposes of offsets under § 51.165(a)(3)(ii) unless the Green Group emissions limit is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the Green Group designation. No emissions reduction credit can be generated for emissions growth that was authorized under the Green Group permit, but never realized.

(iii) At no time (during or after the Green Group effective period) are emissions increases or reductions of a Green Group pollutant that occur during the Green Group effective period creditable for purposes of calculating a net emissions increase under paragraph (b)(3) of this section (that is, must not be used in a "netting analysis"), unless the Green Group emissions limit is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the Green Group designation. No emissions reduction credit can be generated for emissions growth that was authorized under the Green Group permit, but never realized.

(iv) The Green Group designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Green Group is located in an attainment area and the area is redesignated to nonattainment, its Green Group designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Green Group designation. However, if an existing Green Group designation expires, it must re-qualify under the requirements that are currently applicable in the area.

(6) *Setting the 10-year Green Group emissions limit.* The plan shall provide that the Green Group emissions limit is to be established as follows:

(i) Except as provided in paragraphs (z)(6)(ii) through (iv) of this section, the Green Group emissions limit shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(47) of this section) of the Green Group pollutant for each emissions activity included in the Green Group. When establishing the Green Group emissions limit, for a Green Group pollutant, a single period of 24 consecutive months must be used to determine the baseline actual emissions for all existing emissions activities. However, a different period of 24 consecutive months may be used for each different Green Group pollutant. Emissions associated with activities that were permanently shut down after this

24-month period must be subtracted from the Green Group emissions limit. The reviewing authority shall specify a reduced Green Group emissions limit(s) (in tons/yr) in the Green Group permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the Green Group permit.

(ii) For activities (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (z)(6)(i) of this section, the emissions must be added to the Green Group emissions limit in an amount equal to the potential to emit of the activities.

(iii) The reviewing authority shall establish the Green Group emissions level by adjusting the total derived according to paragraphs (z)(6)(i) and (ii) of this section to reflect:

(a) The application of BACT; and

(b) An additional amount of actual emissions consistent with the growth approved for the Green Group.

(iv) Notwithstanding the methodology set out above in paragraphs (z)(6)(i) through (iii) of this section, the reviewing authority shall reduce the Green Group emissions limit and/or establish short-term emissions limits as necessary to meet other applicable requirements of this section, including the requirements of paragraphs (k) and (p).

(7) *Content of the Green Group permit.* The plan shall require that the Green Group permit contain the elements listed in paragraphs (z)(7)(i) through (xiv) of this section and any other provisions that the reviewing authority deems necessary to implement the Green Group.

(i) The Green Group pollutant.

(ii) A description of the equipment that comprises the Green Group, including a description of existing emissions activities, any authorized physical changes or changes in method of operation, and the common air pollution control device. The description must provide information about the maximum total emissions that will be generated by the Green Group's emissions activities and the associated characteristics of the combined emissions streams that will be ducted to the common air pollution control device. The description must be sufficient to distinguish, when a change is subsequently made in the Green Group, whether that change was authorized under the Green Group permit.

(iii) A statement designating the described equipment as a Green Group.

(iv) The Green Group emissions limit (in terms of a 12-month total, rolled monthly) for the group of emissions activities included under the Green Group.

(v) Any shorter-term emissions limits that are necessary to safeguard ambient air quality, as determined according to the requirements of the regulations approved pursuant to this section.

(vi) All emissions limitations and work practice requirements established to ensure that BACT is met.

(vii) The Green Group effective date and the expiration date of the Green Group (i.e., the Green Group effective period). If the source owner or operator must construct a new air pollution control device or modify an existing device as a result of the BACT determination for the Green Group, the permit may provide that the existing emissions activities within the Green Group are not required to meet the BACT emissions limitation(s) or the Green Group emissions limit until the new or modified air pollution control device is in operation. (That is, such emissions activities may continue to meet pre-existing emissions limitations until that time.) However, new and modified emissions activities within the Green Group must be subject to BACT upon startup. In addition, the Green Group must be subject to the Green Group emissions limit (and associated monitoring, recordkeeping, and reporting requirements) beginning at the time that the new or modified air pollution control device is placed in operation.

(viii) Specification in the Green Group permit that if a major stationary source owner or operator applies to renew a Green Group in accordance with paragraph (z)(11) of this section before the end of the effective period, then the Green Group shall not expire at the end of the effective period. It shall remain in effect until a new Green Group permit is issued by the reviewing authority.

(ix) A requirement that emissions calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(x) A requirement that, once the Green Group expires, the major stationary source is subject to the requirements of paragraph (z)(10) of this section.

(xi) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by paragraph (z)(15)(i) of this section.

(xii) A requirement that the major stationary source owner or operator meet all applicable requirements for monitoring, testing, and operation in accordance with the provisions of paragraphs (z)(13) and (14) of this section.

(xiii) A requirement to retain the records required under paragraph (z)(15) of this section on site. Such records may be retained in an electronic format.

(xiv) A requirement to submit the reports required under paragraph (z)(16) of this section by the required deadlines.

(8) *Green Group effective period.* The plan shall require that the reviewing authority specify an effective period of 10 years. The effective period begins upon the Green Group effective date, which is the date that the Green Group permit becomes effective.

(9) *Reopening of the Green Group permit.* The plan shall provide that the requirements in paragraphs (z)(9)(i) through (iii) of this section apply to reopening Green Group permits.

(i) *Mandatory reopenings.* During the Green Group effective period, the reviewing authority must reopen the Green Group permit to:

(a) Correct typographical/calculation errors made in setting the Green Group emissions limit or reflect a more accurate determination of emissions used to establish this limit;

(b) Reduce the Green Group emissions limit if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under § 51.165(a)(3)(ii); and

(c) Reduce the Green Group emissions limit if the owner or operator of the major stationary source creates creditable emissions reductions for use in a netting analysis under paragraph (b)(3) of this section.

(ii) *Discretionary reopenings.* The reviewing authority shall have discretion to reopen the Green Group permit for the purposes listed in paragraphs (z)(9)(ii)(a) through (c) of this section. If the reviewing authority declines to reopen the Green Group permit for any of these purposes, the Green Group emissions limit must be adjusted upon expiration of the Green Group designation or upon renewal of the source's title V permit, whichever comes first. The major stationary source owner or operator is responsible for compliance with any new applicable requirements, regardless of when the permit is reopened and adjusted.

(a) To reduce the Green Group emissions limit to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the Green Group effective date;

(b) To reduce the emissions limit consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

(c) To reduce the emissions limit if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) *Required process.* Except for the permit reopening in paragraph (z)(9)(i)(a) of this section for the correction of typographical/calculation errors that do not increase the Green Group emissions limit, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (q) of this section.

(10) *Expiration of a Green Group.* The plan shall require that any Green Group designation that is not renewed in accordance with the procedures in paragraph (z)(11) of this section shall expire at the end of its effective period. After expiration of the Green Group designation, the following provisions apply:

(i) The emissions unit defined by the Green Group remains an emissions unit for purposes of major NSR and remains subject to the BACT control requirements; Green Group emissions limit; any shorter-term emissions limits; and monitoring, recordkeeping, reporting, and testing requirements imposed by the Green Group permit.

(ii) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during or prior to the Green Group effective period.

(iii) Any subsequent physical change or change in the method of operation at the emissions unit defined by the Green Group will be subject to PSD requirements if such change meets the definition of major modification in paragraph (b)(2) of this section.

(11) *Renewal of a Green Group.* The plan shall require that the following provisions apply to renewal of a Green Group:

(i) *Required procedures.* A Green Group may be renewed through issuance of a new major NSR permit according to all the requirements of this paragraph (z) for the initial Green Group designation.

(ii) *Application deadline.* A major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a Green Group. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date that the Green Group designation would otherwise expire. This deadline for application submittal is to ensure that the Green Group designation will not expire before the Green Group is renewed. If the owner or operator of a major stationary source submits a complete application to renew the Green Group within this time period, then the Green Group shall continue to be effective until the new PSD permit with the renewed Green Group is issued.

(12) *Increasing a Green Group emissions limit during its effective period.* The plan shall provide that the reviewing authority may increase a Green Group emissions limit during its effective period only if the increase is contained in a new permit incorporating the increase into a new Green Group consistent with the requirements of the regulations approved pursuant to this section.

(13) *Monitoring requirements for Green Group emissions limitations.* The plan shall provide that the following monitoring requirements apply to Green Groups.

(i) *General requirements.*

(a) Each Green Group permit must contain enforceable requirements for the monitoring system that accurately determines, in terms of mass per unit of time, emissions of the Green Group pollutant from the emissions activities under the Green Group. Any monitoring system authorized for use in the Green Group permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the Green Group permit.

(b) The Green Group monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (z)(13)(ii)(a) through (d) of this section and must be approved by the reviewing authority.

(c) Notwithstanding paragraph (z)(13)(i)(b) of this section, you may also employ an alternative monitoring approach that meets paragraph (z)(13)(i)(a) of this section if approved by the reviewing authority.

(b) Failure to use a monitoring system that meets the requirements of this

section renders the Green Group invalid.

(ii) *Minimum performance requirements for approved monitoring approaches.* The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (z)(13)(iii) through (ix) of this section:

(a) Mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) Emissions factors.

(iii) *Mass balance calculations.* An owner or operator using mass balance calculations to monitor the Green Group pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) Provide a demonstrated means of validating the published content of the Green Group pollutant that is contained in or created by all materials used in or at the emissions activity;

(b) Assume that the emissions activity emits all of the Green Group pollutant that is contained in or created by any raw material or fuel used in or at the emissions activity, if it cannot otherwise be accounted for in the process; and

(c) Where the vendor of a material or fuel, which is used in or at the emissions activity, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the Green Group pollutant emissions unless the reviewing authority determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) *CEMS.* An owner or operator using CEMS to monitor Green Group pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(b) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions activity is operating.

(v) *CPMS or PEMS.* An owner or operator using CPMS or PEMS to monitor Green Group pollutant emissions shall meet the following requirements:

(a) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the Green Group pollutant emissions across the range of operation of the emissions activity; and

(b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the reviewing authority, while the emissions activity is operating.

(vi) *Emissions factors.* An owner or operator using emissions factors to monitor Green Group pollutant emissions shall meet the following requirements:

(a) All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) The emissions activity shall operate within the designated range of use for the emissions factor, if applicable; and

(c) If technically practicable, the owner or operator of a significant or major emissions activity that relies on an emissions factor to calculate Green Group pollutant emissions shall conduct validation through performance testing or other scientifically valid means approved by the reviewing authority to determine a site-specific emissions factor. Such testing or other means shall occur within 6 months of Green Group permit issuance, unless the reviewing authority determines that testing is not required.

(vii) *Missing data procedures.* A source owner or operator must record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions activity during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the Green Group permit.

(viii) *Alternative requirements.* Notwithstanding the requirements in paragraphs (z)(13)(iii) through (vii) of this section, where an owner or operator of an emissions activity cannot demonstrate a correlation between the monitored parameter(s) and the Green Group pollutant emissions rate at all operating points of the emissions activity, the reviewing authority shall, at the time of permit issuance:

(a) Establish default value(s) for determining compliance with the Green Group emissions limit based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) Determine that operation of the emissions activity during operating conditions when there is no correlation between monitored parameter(s) and the Green Group pollutant emissions is a violation of the Green Group emissions limit.

(ix) *Re-validation.* All data used to establish the Green Group pollutant

emissions must be re-validated through performance testing or other scientifically valid means approved by the reviewing authority. Such testing must occur at least once every 5 years after issuance of the Green Group.

(14) *Additional monitoring requirements for BACT.* The plan shall provide that the permit must also require the owner or operator with a Green Group to monitor, measure, and record data sufficient to determine whether:

(i) The emissions reduction measures (including the Green Group air pollution control device) meet the emissions limitations and/or work practice requirements adopted in conjunction with BACT; and

(ii) The demonstrated capacity of the Green Group air pollution control device was exceeded by the emissions stream(s) directed to it at any time during the reporting period. The capacity of the control device is considered exceeded if the characteristics of the emissions stream entering the device are outside the range for which it has been demonstrated that the device can achieve BACT, absent valid monitoring data (from a continuous monitoring system or other monitoring approach approved for such use by the reviewing authority) showing compliance with BACT at the new operating level. A period of exceedance is considered a deviation for purposes of recordkeeping and reporting.

(15) *Recordkeeping requirements.* The plan shall require that the following recordkeeping requirements apply to Green Groups:

(i) *Records to determine compliance.* The Green Group permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (z) of this section and of the Green Group permit, including a determination of each emissions activity's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) *Other records.* The Green Group permit shall require an owner or operator to retain a copy of the following records for the duration of the Green Group effective period plus 5 years:

(a) A copy of the Green Group permit application and any applications for revisions to the Green Group permit; and

(b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(16) *Reporting and notification requirements.* The plan shall require the

owner or operator to submit semi-annual monitoring reports and prompt deviation reports to the reviewing authority in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (z)(16)(i) through (iii) of this section.

(i) *Semi-annual report.* The semi-annual report shall be submitted to the reviewing authority within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (z)(16)(i)(a) through (g) of this section.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons per year) from the emissions activities included under the Green Group, based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (z)(15)(i) of this section.

(c) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual Green Group pollutant emissions.

(d) A list of any emissions activities included under the Green Group that were added during the preceding 6-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions activity monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by the method included in the permit, as provided by paragraph (z)(13)(vii) of this section.

(g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) *Deviation report.* The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the Green Group emissions limit or emissions reduction requirement (e.g., BACT limit), including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B)

of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

(a) The identification of owner and operator and the permit number;

(b) The Green Group requirement that experienced the deviation or that was exceeded;

(c) Emissions resulting from the deviation or the exceedance; and

(d) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) *Re-validation results.* The owner or operator shall submit to the reviewing authority the results of any re-validation test or method within 3 months after completion of such test or method.

(17) *Transition requirements.* The plan shall provide that the reviewing authority may not issue a Green Group permit that does not comply with the requirements in paragraphs (z)(1) through (17) of this section or their equivalent after the Administrator has approved regulations incorporating these requirements into the plan. The plan shall provide that the reviewing authority may supersede any Green Group permit that was established prior to the date of approval of the plan by the Administrator with a Green Group permit that complies with the requirements of paragraphs (z)(1) through (17) of this section.

PART 52—[AMENDED]

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

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

Subpart A—[Amended]

5. Section 52.21 is amended as follows:

- a. By revising paragraph (a)(2)(iv)(a);
- b. By adding paragraph (a)(2)(vii);
- c. By adding paragraph (b)(2)(v);
- d. By revising paragraph (b)(21)(i);
- e. By revising paragraph (b)(48)(iv);
- f. By revising paragraph (r)(6) introductory text; and
- g. By adding paragraph (dd).

The additions and revisions read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

- (a) * * *
- (2) * * *

(iv) * * *

(a) Except as otherwise provided in paragraphs (a)(2)(v) through (vii) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(40) of this section), and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

* * * * *

(vii) For any major stationary source with a Green Group for a regulated NSR pollutant, the owner or operator shall comply with the requirements in paragraph (dd) of this section for those emissions activities included within the Green Group.

* * * * *

(b) * * *

(2) * * *

(v) This definition shall not apply to approved physical changes or changes in the method of operation within a Green Group with respect to any Green Group pollutant when the major stationary source is complying with the requirements under paragraph (dd) of this section for a Green Group for that pollutant.

* * * * *

(21)(i) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(21)(ii) through (iv) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (aa) of this section or a Green Group under paragraph (dd) of this section. Instead, paragraphs (b)(41) and (b)(48) of this section shall apply for those purposes.

* * * * *

(48) * * *

(iv) For a PAL or Green Group for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(48)(i) of this section, for other existing emissions units in accordance with the procedures contained in paragraph (b)(48)(ii) of this section, and for a new emissions unit in accordance with the procedures

contained in paragraph (b)(48)(iii) of this section.

* * * * *

(r) * * *

(6) The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at a Green Group or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) of this section for calculating projected actual emissions.

* * * * *

(dd) *Green Groups*. The provisions in paragraphs (dd)(1) through (17) of this section govern Green Groups.

(1) *Applicability*. The Administrator may issue a permit pursuant to this section designating a Green Group at any existing major stationary source if the permit contains terms and conditions assuring that the Green Group meets the requirements in paragraphs (dd)(1) through (17) of this section.

(i) *Changes at a Green Group*. Any physical change in or change in the method of operation authorized for a Green Group pursuant to the requirements in paragraphs (dd)(1) through (17) of this section that maintains the Green Group's total emissions at or below the Green Group emissions limit and maintains the Green Group's compliance with its best available control technology (BACT) limit(s):

(a) Is not a major modification for the Green Group pollutant;

(b) Does not have to be approved through the PSD program; and

(c) Is not subject to the provisions of paragraphs (j)(4) and (r)(2) of this section.

(ii) *Prior requirements*. Except as provided under paragraph (dd)(1)(i)(c) of this section, a major stationary source shall continue to comply with all remaining applicable Federal or State requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the Green Group.

(2) *Definitions*. For the purposes of this paragraph (dd), the definitions in paragraphs (dd)(2)(i) through (iv) of this section apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) or (aa) of this section or in the Act.

(i) *Green Group* means a group of new and/or existing emissions activities that

is characterized by use of a common, dedicated air pollution control device and that has been designated as a Green Group by the Administrator in a permit issued pursuant to this section. A Green Group is a single emissions unit for purposes of this section.

(ii) *Green Group pollutant* means a pollutant emitted from the emissions activities that comprise the Green Group and for which a Green Group is designated at a major stationary source.

(iii) *Green Group permit* means the major NSR permit issued by the Administrator that establishes a Green Group for a major stationary source.

(iv) *Green Group emissions limit* means an emissions limitation for the Green Group pollutant, expressed in tons per year, that is enforceable as a practical matter and established for a Green Group at a major stationary source in accordance with paragraphs (dd)(1) through (17) of this section.

(3) *Permit application requirements*. The owner or operator of a major stationary source must request approval for a Green Group in an application for a major NSR permit that meets the requirements of paragraphs (j) through (r)(5) of this section, as applicable. As part of a permit application requesting a Green Group, the owner or operator of a major stationary source shall submit the following information to the Administrator for approval:

(i) *List of designated emissions activities*. A list of the emissions activities proposed for inclusion in the Green Group. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emissions limitations, or work practices apply to each activity.

(ii) *Baseline actual emissions*. Calculations of the baseline actual emissions from included emissions activities (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the activity, but also emissions associated with startup, shutdown, and malfunction.

(iii) *Monitoring data conversion procedures*. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (dd)(15)(i) of this section.

(iv) *Description*. A description of the equipment that comprises the Green Group, including a description of existing emissions activities, proposed physical changes or changes in method

of operation (which may include the addition of new emissions activities), and the common air pollution control device. The description must provide information about maximum total emissions that will be generated by the Green Group's emissions activities and the associated characteristics of the combined emissions streams (including the worst-case emissions stream) that will be ducted to the common air pollution control device. The description must be sufficient:

(a) To allow the Administrator to distinguish changes proposed to be authorized in the Green Group from unauthorized changes; and

(b) To enable the Administrator to determine BACT for the Green Group consistent with paragraphs (dd)(4)(ii) and (dd)(7)(vi) of this section.

(v) *Control technology demonstration.* A demonstration that the proposed control technology represents BACT. Such a demonstration shall confirm that the emissions reduction capacity of the proposed common control device is sufficient to meet the relevant emissions reduction requirement, considering the maximum total emissions from the Green Group and the associated characteristics of the combined emissions streams that will be ducted to the common air pollution control device. The BACT demonstration shall be based on worst-case emissions from the new and existing emissions activities authorized for the Green Group.

(vi) *Monitoring system.* A proposed monitoring system sufficient to meet the requirements of paragraph (dd)(13) of this section with respect to Green Group emissions limit(s) and the requirements of paragraph (dd)(14) of this section with respect to BACT-related limitations.

(vii) *Proposed Green Group emissions limit.* The proposed Green Group emissions limit, in tons per year, with supporting documentation including, but not limited to, the following:

(a) Baseline actual emissions of existing emissions activities proposed to be included in the Green Group, adjusted to reflect the application of BACT; and

(b) The amount of emissions growth proposed for the Green Group as the result of the proposed physical, operational, and other changes.

(4) *General requirements for designating a Green Group.* The Administrator may designate a Green Group at an existing major stationary source through issuance of a PSD permit according to the requirements of this section, provided that in addition the

requirements in paragraphs (dd)(4)(i) through (vii) of this section are met.

(i) *Green Group emissions limit.* The Administrator, consistent with paragraph (dd)(6) of this section, shall establish a Green Group emissions limit in tons per year for those emissions activities included under the Green Group (including any new emissions activities added within the Green Group). For each month during the Green Group effective period after the first 12 months of establishing the Green Group, the major stationary source owner or operator shall show that the sum of the monthly emissions from each included emissions activity for the previous 12 consecutive months is less than or equal to the Green Group emissions limit (i.e. a 12-month total, rolled monthly). For each month during the first 11 months from the Green Group effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the Green Group effective date for each emissions activity under the Green Group is less than or equal to the Green Group emissions limit.

(ii) *BACT emissions limit.* The Administrator shall determine BACT for the emissions of the Green Group pollutant from the group of emissions activities designated as a Green Group. The BACT emissions limit shall ensure that the emissions of the emissions activities included in the Green Group are ducted to a common, dedicated air pollution control device and ensure compliance with any applicable emissions limitation under the State Implementation Plan and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61. The control device, in combination with any additional control measures consistent with paragraphs (dd)(4)(ii)(a) and (b) of this section, must achieve the BACT level of emissions reductions for the Green Group pollutant.

(a) In addition to the requirement to duct emissions from the Green Group to a common air pollution control device, additional control measures such as pollution prevention (as defined under paragraph (b)(39) of this section), work practices, and/or operational standards may be defined as part of the approved control measures.

(b) Pollution prevention measures that have been determined to represent BACT may be approved to apply during certain periods of operation. The included emissions activities must have ductwork extending to the common air pollution control device, but the owner or operator would be allowed to bypass

the control device during periods when the pollution prevention alternative is in use, consistent with the BACT determination. Emissions activities that exclusively use the pollution prevention alternative and never use the common air pollution control device may not be included in the Green Group.

(iii) *Permit content.* The Green Group permit shall contain all the requirements of paragraph (dd)(7) of this section.

(iv) *Included emissions.* The Green Group emissions limit shall include fugitive emissions of the Green Group pollutant, to the extent quantifiable, from all emissions activities included under the Green Group.

(v) *Regulated pollutant.* Each Green Group shall regulate emissions of only one pollutant. However, the same collection of emissions activities may be designated separately as a Green Group for another pollutant.

(vi) *Effective period.* Each Green Group designation shall have an effective period of 10 years.

(vii) *Monitoring, recordkeeping, and reporting.* The Green Group permit shall require the owner or operator to comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (dd)(13) through (16) of this section for each included emissions activity.

(5) *General provisions for Green Groups.* The provisions set out in paragraphs (dd)(5)(i) through (iv) apply to Green Groups:

(i) Any project for which the owner or operator begins actual construction after the effective date of a Green Group designation and before its expiration date will be considered to have occurred while the emissions unit was a Green Group.

(ii) At no time (during or after the Green Group effective period) are emissions reductions of a Green Group pollutant that occur during the Green Group effective period creditable as decreases for purposes of offsets under § 51.165(a)(3)(ii) of this chapter unless the Green Group emissions limit is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the Green Group designation. No emissions reduction credit can be generated for emissions growth that was authorized under the Green Group permit, but never realized.

(iii) At no time (during or after the Green Group effective period) are emissions increases or reductions of a Green Group pollutant that occur during the Green Group effective period creditable for purposes of calculating a net emissions increase under paragraph

(b)(3) of this section (that is, must not be used in a "netting analysis"), unless the Green Group emissions limit is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the Green Group designation. No emissions reduction credit can be generated for emissions growth that was authorized under the Green Group permit, but never realized.

(iv) The Green Group designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Green Group is located in an attainment area and the area is redesignated to nonattainment, its Green Group designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Green Group designation. However, if an existing Green Group designation expires, it must re-qualify under the requirements that are currently applicable in the area.

(6) *Setting the 10-year Green Group emissions limit.* (i) Except as provided in paragraphs (dd)(6)(ii) through (iv) of this section, the Green Group emissions limit shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(48) of this section) of the Green Group pollutant for each emissions activity included in the Green Group. When establishing the Green Group emissions limit, for a Green Group pollutant, a single period of 24 consecutive months must be used to determine the baseline actual emissions for all existing emissions activities. However, a different period of 24 consecutive months may be used for each different Green Group pollutant. Emissions associated with activities that were permanently shut down after this 24-month period must be subtracted from the Green Group emissions limit. The Administrator shall specify a reduced Green Group emissions limit(s) (in tons/yr) in the Green Group permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Administrator is aware of prior to issuance of the Green Group permit.

(ii) For activities (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (dd)(6)(i) of this section, the emissions must be added to the Green Group emissions limit in an amount equal to the potential to emit of the activities.

(iii) The Administrator shall establish the Green Group emissions level by

adjusting the total derived according to paragraphs (dd)(6)(i) and (ii) of this section to reflect:

(a) The application of BACT; and

(b) An additional amount of actual emissions consistent with the growth approved for the Green Group.

(iv) Notwithstanding the methodology set out above in paragraphs (dd)(6)(i) through (iii) of this section, the Administrator shall reduce the Green Group emissions limit and/or establish short-term emissions limits as necessary to meet other applicable requirements of this section, including the requirements of paragraphs (k) and (p).

(7) *Content of the Green Group permit.* The Green Group permit must contain the elements listed in paragraphs (dd)(7)(i) through (xiv) of this section and any other provisions that the Administrator deems necessary to implement the Green Group.

(i) The Green Group pollutant.

(ii) A description of the equipment that comprises the Green Group, including a description of existing emissions activities, any authorized physical changes or changes in method of operation, and the common air pollution control device. The description must provide information about the maximum total emissions that will be generated by the Green Group's emissions activities and the associated characteristics of the combined emissions streams that will be ducted to the common air pollution control device. The description must be sufficient to distinguish, when a change is subsequently made in the Green Group, whether that change was authorized under the Green Group permit.

(iii) A statement designating the described equipment as a Green Group.

(iv) The Green Group emissions limit (in terms of a 12-month total, rolled monthly) for the group of emissions activities included under the Green Group.

(v) Any shorter-term emissions limits that are necessary to safeguard ambient air quality, as determined according to the requirements of this section.

(vi) All emissions limitations and work practice requirements established to ensure that BACT is met.

(vii) The Green Group effective date and the expiration date of the Green Group (i.e., the Green Group effective period). If the source owner or operator must construct a new air pollution control device or modify an existing device as a result of the BACT determination for the Green Group, the permit may provide that the existing emissions activities within the Green Group are not required to meet the

BACT emissions limitation(s) or the Green Group emissions limit until the new or modified air pollution control device is in operation. (That is, such emissions activities may continue to meet pre-existing emissions limitations until that time.) However, new and modified emissions activities within the Green Group must be subject to BACT upon startup. In addition, the Green Group must be subject to the Green Group emissions limit (and associated monitoring, recordkeeping, and reporting requirements) beginning at the time that the new or modified air pollution control device is placed in operation.

(viii) Specification in the Green Group permit that if a major stationary source owner or operator applies to renew a Green Group in accordance with paragraph (dd)(11) of this section before the end of the effective period, then the Green Group shall not expire at the end of the effective period. It shall remain in effect until a new Green Group permit is issued by the Administrator.

(ix) A requirement that emissions calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(x) A requirement that, once the Green Group expires, the major stationary source is subject to the requirements of paragraph (dd)(10) of this section.

(xi) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by paragraph (dd)(15)(i) of this section.

(xii) A requirement that the major stationary source owner or operator meet all applicable requirements for monitoring, testing, and operation in accordance with the provisions under paragraphs (dd)(13) and (14) of this section.

(xiii) A requirement to retain the records required under paragraph (dd)(15) of this section on site. Such records may be retained in an electronic format.

(xiv) A requirement to submit the reports required under paragraph (dd)(16) of this section by the required deadlines.

(8) *Green Group effective period.* The Administrator shall specify an effective period of 10 years. The effective period begins upon the Green Group effective date, which is the date that the Green Group permit becomes effective.

(9) *Reopening of the Green Group permit.* The requirements in paragraphs (dd)(9)(i) through (iii) of this section apply to reopening Green Group permits.

(i) *Mandatory reopenings.* During the Green Group effective period, the Administrator must reopen the Green Group permit to:

(a) Correct typographical/calculation errors made in setting the Green Group emissions limit or reflect a more accurate determination of emissions used to establish this limit;

(b) Reduce the Green Group emissions limit if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under (51.165(a)(3)(ii) of this chapter; and

(c) Reduce the Green Group emissions limit if the owner or operator of the major stationary source creates creditable emissions reductions for use in a netting analysis under paragraph (b)(3) of this section.

(ii) *Discretionary reopenings.* The Administrator shall have discretion to reopen the Green Group permit for the purposes listed in paragraphs (dd)(9)(i)(a) through (c) of this section. If the Administrator declines to reopen the Green Group permit for any of these purposes, the Green Group emissions limit must be adjusted upon expiration of the Green Group designation or upon renewal of the source's title V permit, whichever comes first. The major stationary source owner or operator is responsible for compliance with any new applicable requirements, regardless of when the permit is reopened and adjusted.

(a) To reduce the Green Group emissions limit to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the Green Group effective date;

(b) To reduce the emissions limit consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

(c) To reduce the emissions limit if the Administrator determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(iii) *Required process.* Except for the permit reopening in paragraph (dd)(9)(i)(a) of this section for the correction of typographical/calculation errors that do not increase the Green Group emissions limit, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (q) of this section.

(10) *Expiration of a Green Group.* Any Green Group designation that is not renewed in accordance with the procedures in paragraph (dd)(11) of this section shall expire at the end of its effective period. After expiration of the Green Group designation, the following provisions apply:

(i) The emissions unit defined by the Green Group remains an emissions unit for purposes of major NSR and remains subject to the BACT control requirements; Green Group emissions limit; any shorter-term emissions limits; and monitoring recordkeeping, reporting, and testing requirements imposed by the Green Group permit.

(ii) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during or prior to the Green Group effective period.

(iii) Any subsequent physical change or change in the method of operation at the emissions unit defined by the Green Group will be subject to PSD requirements if such change meets the definition of major modification in paragraph (b)(2) of this section.

(11) *Renewal of a Green Group.* The following provisions apply to renewal of a Green Group:

(i) *Required procedures.* A Green Group may be renewed through issuance of a new major NSR permit according to all the requirements of this paragraph (dd) for the initial Green Group designation.

(ii) *Application deadline.* A major stationary source owner or operator shall submit a timely application to the Administrator to request renewal of a Green Group. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date that the Green Group designation would otherwise expire. This deadline for application submittal is to ensure that the Green Group designation will not expire before the Green Group is renewed. If the owner or operator of a major stationary source submits a complete application to renew the Green Group within this time period, then the Green Group shall continue to be effective until the new PSD permit with the renewed Green Group is issued.

(12) *Increasing a Green Group emissions limit during its effective period.* The Administrator may increase a Green Group emissions limit during its effective period only if the increase is contained in a new permit incorporating the increase into a new Green Group consistent with the requirements of this section.

(13) *Monitoring requirements for Green Group emissions limitations.*

(i) *General requirements.*

(a) Each Green Group permit must contain enforceable requirements for the monitoring system that accurately determines, in terms of mass per unit of time, emissions of the Green Group pollutant from the emissions activities under the Green Group. Any monitoring system authorized for use in the Green Group permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the Green Group permit.

(b) The Green Group monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (dd)(13)(i)(a) through (d) of this section and must be approved by the Administrator.

(c) Notwithstanding paragraph (dd)(13)(i)(b) of this section, you may also employ an alternative monitoring approach that meets paragraph (dd)(13)(i)(a) of this section if approved by the Administrator.

(d) Failure to use a monitoring system that meets the requirements of this section renders the Green Group invalid.

(ii) *Minimum performance requirements for approved monitoring approaches.* The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (dd)(13)(iii) through (ix) of this section:

(a) Mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) Emissions factors.

(iii) *Mass balance calculations.* An owner or operator using mass balance calculations to monitor the Green Group pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) Provide a demonstrated means of validating the published content of the Green Group pollutant that is contained in or created by all materials used in or at the emissions activity;

(b) Assume that the emissions activity emits all of the Green Group pollutant that is contained in or created by any raw material or fuel used in or at the emissions activity, if it cannot otherwise be accounted for in the process; and

(c) Where the vendor of a material or fuel, which is used in or at the

emissions activity, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the Green Group pollutant emissions unless the Administrator determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) *CEMS*. An owner or operator using CEMS to monitor Green Group pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(b) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions activity is operating.

(v) *CPMS or PEMS*. An owner or operator using CPMS or PEMS to monitor Green Group pollutant emissions shall meet the following requirements:

(a) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the Green Group pollutant emissions across the range of operation of the emissions activity; and

(b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Administrator, while the emissions activity is operating.

(vi) *Emissions factors*. An owner or operator using emissions factors to monitor Green Group pollutant emissions shall meet the following requirements:

(a) All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) The emissions activity shall operate within the designated range of use for the emissions factor, if applicable; and

(c) If technically practicable, the owner or operator of a significant or major emissions activity that relies on an emissions factor to calculate Green Group pollutant emissions shall conduct validation through performance testing or other scientifically valid means approved by the Administrator to determine a site-specific emissions factor. Such testing or other means shall occur within 6 months of Green Group permit issuance.

(vii) *Missing data procedures*. A source owner or operator must record and report maximum potential emissions without considering enforceable emissions limitations or

operational restrictions for an emissions activity during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the Green Group permit.

(viii) *Alternative requirements*. Notwithstanding the requirements in paragraphs (dd)(13)(iii) through (vii) of this section, where an owner or operator of an emissions activity cannot demonstrate a correlation between the monitored parameter(s) and the Green Group pollutant emissions rate at all operating points of the emissions activity, the Administrator shall, at the time of permit issuance:

(a) Establish default value(s) for determining compliance with the Green Group emissions limit based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) Determine that operation of the emissions activity during operating conditions when there is no correlation between monitored parameter(s) and the Green Group pollutant emissions is a violation of the Green Group emissions limit.

(ix) *Re-validation*. All data used to establish the Green Group pollutant emissions must be re-validated through performance testing or other scientifically valid means approved by the Administrator. Such testing must occur at least once every 5 years after issuance of the Green Group.

(14) *Additional monitoring requirements for BACT*. The permit shall also require the owner or operator with a Green Group to monitor, measure, and record data sufficient to determine whether:

(i) The emissions reduction measures (including the Green Group air pollution control device) meet the emissions limitations and/or work practice requirements adopted in conjunction with BACT; and

(ii) The demonstrated capacity of the Green Group air pollution control device was exceeded by the emissions stream(s) directed to it at any time during the reporting period. The capacity of the control device is considered exceeded if the characteristics of the emissions stream entering the device are outside the range for which it has been demonstrated that the device can achieve BACT, absent valid monitoring data (from a continuous monitoring system or other monitoring approach approved for such use by the Administrator) showing compliance with BACT at the new operating level. A period of exceedance is considered a deviation for purposes of recordkeeping and reporting.

(15) *Recordkeeping requirements*.

(i) *Records to determine compliance*. The Green Group permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (dd) of this section and of the Green Group permit, including a determination of each emissions activity's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) *Other records*. The Green Group permit shall require an owner or operator to retain a copy of the following records for the duration of the Green Group effective period plus 5 years:

(a) A copy of the Green Group permit application and any applications for revisions to the Green Group permit; and

(b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(16) *Reporting and notification requirements*. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Administrator in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (dd)(16)(i) through (iii) of this section.

(i) *Semi-annual report*. The semi-annual report shall be submitted to the Administrator within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (dd)(16)(i)(a) through (g) of this section.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons per year) from the emissions activities included under the Green Group, based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (dd)(15)(i) of this section.

(c) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual Green Group pollutant emissions.

(d) A list of any emissions activities included under the Green Group that were added during the preceding 6-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the

anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions activity monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by the method included in the permit, as provided by paragraph (dd)(13)(vii) of this section.

(g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) *Deviation report.* The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the Green Group emissions limit or emissions reduction requirement (e.g., BACT limit), including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

(a) The identification of owner and operator and the permit number;

(b) The Green Group requirement that experienced the deviation or that was exceeded;

(c) Emissions resulting from the deviation or the exceedance; and

(d) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) *Re-validation results.* The owner or operator shall submit to the Administrator the results of any re-validation test or method within 3 months after completion of such test or method.

(17) *Transition requirements.* The Administrator may not issue a Green Group permit that does not comply with the requirements in paragraphs (dd)(1) through (17) of this section or their equivalent after [EFFECTIVE DATE OF FINAL RULE]. The Administrator may supersede any Green Group permit that was established prior to [EFFECTIVE DATE OF FINAL RULE] with a Green Group permit that complies with the requirements of paragraphs (dd)(1) through (17) of this section.

PART 70—[AMENDED]

6. The authority citation for part 70 continues to read as follows:

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

7. Section 70.2 is amended by adding definitions of “Alternative operating scenario (AOS)” and “Approved replicable methodology (ARM)” in alphabetical order, to read as follows:

§ 70.2 Definitions.

Alternative operating scenario (AOS) means a scenario authorized in a part 70 permit that involves a physical or operational change at the part 70 source for a particular emissions unit, and that subjects the unit to one or more applicable requirements that differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

Approved replicable methodology (ARM) means part 70 permit terms that:

- (1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this part, such that the protocol is based on sound scientific/mathematical principles and provides reproducible results using the same inputs; and
- (2) Require the results of that protocol to be used for assuring compliance with such applicable requirement or requirement of this part, including where an ARM is used for determining applicability of a specific requirement to a particular change.

8. Section 70.4 is amended by revising paragraph (d)(3)(xi) to read as follows:

§ 70.4 State program submittals and transition.

(d) * * *

- (3) * * *

(xi) *Approval of AOSs.* The program submittal must include provisions to insure that AOSs requested by the source and approved by the permitting authority are included in the part 70 permit pursuant to § 70.6(a)(9).

9. Section 70.5 is amended as follows:

- a. By revising paragraph (c)(2);
- b. By revising paragraph (c)(3)(iii);
- c. By revising paragraph (c)(7);
- d. By adding paragraph (c)(8)(ii)(D); and
- e. By adding paragraph (c)(8)(iii)(D).

The additions and revisions read as follows:

§ 70.5 Permit applications.

* * * * *

(c) * * *
(2) A description of the source's processes and products (by Standard Industrial Classification Code) including those associated with any AOS identified by the source.

(3) * * *
(iii) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an emissions cap, tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed to determine an applicable requirement.

(7) Additional information as determined to be necessary by the permitting authority to define AOSs identified by the source pursuant to § 70.6(a)(9) of this part or to define permit terms and conditions implementing any AOS under § 70.6(a)(9) or implementing § 70.4(b)(12) or § 70.6(a)(10) of this part. The permit application shall include documentation demonstrating that the source has obtained all authorization(s) required under the applicable requirements relevant to any proposed AOSs, or a certification that the source has submitted all relevant materials, including permit application(s) to the appropriate permitting authority, for obtaining such authorization(s).

(8) * * *
(ii) * * *

(D) For applicable requirements associated with an AOS, a statement that the source will meet such requirements upon implementation of the AOS. If an AOS implicates an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) * * *
(D) For applicable requirements associated with an AOS, a statement that the source will meet such requirements upon implementation of the AOS. If an AOS involves an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

* * * * *

10. Section 70.6 is amended by revising paragraphs (a)(1) introductory

text, (a)(3)(iii)(A), and (a)(9) to read as follows:

§ 70.6 Permit content.

(a) * * *

(1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance, such as ARMs.

* * * * *

(3) * * *

(iii) * * *

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports, and the reports must identify the AOSs and relevant ARMs implemented during the reporting period. All required reports must be certified by a responsible official consistent with § 70.5(d) of this part.

* * * * *

(9) Terms and conditions for reasonably anticipated alternative operating scenarios (AOSs) identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the AOS under which it is operating. The log shall include a description of the change that triggered the AOS; the emissions unit(s) included in the AOS; the applicable requirements and other permit terms and conditions that apply to the AOS; and the date the source began to operate the AOS;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such AOS; and

(iii) Must ensure that the terms and conditions of each AOS meet all applicable requirements and the requirements of this part. The permit terms must include a description of the emissions units, the anticipated changes, and the applicable requirements included in the AOS, and must describe how the source will comply with such requirements. The permitting authority shall not approve an AOS into the part 70 permit until the source has obtained all authorizations required under any applicable requirement relevant to that AOS.

* * * * *

PART 71—[AMENDED]

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

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

12. Section 71.2 is amended by adding definitions of "Alternative operating scenario (AOS)" and "Approved replicable methodology (ARM)" in alphabetical order, to read as follows:

§ 71.2 Definitions.

* * * * *

Alternative operating scenario (AOS) means a scenario authorized in a part 71 permit that involves a physical or operational change at the part 71 source for a particular emissions unit, and that subjects the unit to one or more applicable requirements that differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

* * * * *

Approved replicable methodology (ARM) means part 71 permit terms that:

(1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this part, such that the protocol is based on sound scientific/mathematical principles and provides reproducible results using the same inputs; and

(2) Require the results of that protocol to be used for assuring compliance with such applicable requirement or requirement of this part, including where an ARM is used for determining applicability of a specific requirement to a particular change.

* * * * *

13. Section 71.5 is amended as follows:

- a. By revising paragraph (c)(2);
b. By revising paragraph (c)(3)(iii);
c. By revising paragraph (c)(7);
d. By adding paragraph (c)(8)(ii)(D);
and
e. By adding paragraph (c)(8)(iii)(D).

The additions and revisions read as follows:

§ 71.5 Permit applications.

* * * * *

(c) * * *

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including those associated with any AOS identified by the source.

(3) * * *

(iii) Emissions rates in tpy and in such terms as are necessary to establish compliance consistent with the

applicable standard reference test method. For emissions units subject to an emissions cap, tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed to determine an applicable requirement.

* * * * *

(7) Additional information as determined to be necessary by the permitting authority to define AOSs identified by the source pursuant to § 71.6(a)(9) or to define permit terms and conditions implementing any AOS under § 71.6(a)(9) or implementing § 71.6(a)(10) or § 71.6(a)(13). The permit application shall include documentation demonstrating that the source has obtained all authorization(s) required under the applicable requirements relevant to any proposed AOSs, or a certification that the source has submitted all relevant materials, including permit application(s) to the appropriate permitting authority, for obtaining such authorization(s).

(8) * * *

(ii) * * *

(D) For applicable requirements associated with an AOS, a statement that the source will meet such requirements upon implementation of the AOS. If an AOS implicates an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) * * *

(D) For applicable requirements associated with an AOS, a statement that the source will meet such requirements upon implementation of the AOS. If an AOS includes an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

* * * * *

14. Section 71.6 is amended by revising paragraphs (a)(1) introductory text, (a)(3)(iii)(A), and (a)(9) to read as follows:

§ 71.6 Permit content.

(a) * * *

(1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance, such as ARMs.

* * * * *

(3) * * *

(iii) * * *

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports, and the reports must identify the AOSs and relevant ARMs implemented during the reporting period. All required reports must be certified by a responsible official consistent with § 71.5(d).

* * * * *

(9) Terms and conditions for reasonably anticipated alternative operating scenarios (AOSs) identified by the source in its application as approved

by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the AOS under which it is operating. The log shall include a description of the change that triggered the AOS; the emissions unit(s) included in the AOS; the applicable requirements and other permit terms and conditions that apply to the AOS; and the date the source began to operate the AOS;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such AOS; and

(iii) Must ensure that the terms and conditions of each AOS meet all applicable requirements and the requirements of this part. The permit terms must include a description of the emissions units, the anticipated changes, and the applicable requirements included in the AOS, and must describe how the source will comply with such requirements. The permitting authority shall not approve an AOS into the part 71 permit until the source has obtained all authorizations required under any applicable requirement relevant to that AOS.

* * * * *

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Federal Register

**Wednesday,
September 12, 2007**

Part III

Department of Housing and Urban Development

**24 CFR Parts 50, 51, 55, 58, and 91
Amendments to HUD's Environmental
Regulations; Proposed Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 50, 51, 55, 58, and 91

[Docket No. FR-4954-P-01]

RIN 2501-AD11

**Amendments to HUD's Environmental
Regulations**

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update HUD's environmental regulations to implement statutory changes and make environmental compliance easier. The rule would consider the use of electronic communication for certain records and submissions. The rule would also make other changes to clarify HUD's environmental regulations and provide conforming amendments.

DATES: *Comment Due Date:* November 13, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through The Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically so that HUD can make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7244, Washington, DC 20410, telephone

number (202) 708-2894, extension 4439 (this is not a toll-free number), (e-mail address: Richard.Broun@hud.gov) or Walter Prybyla, Environmental Review Division, Office of Environment and Energy, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410, telephone number (202) 708-1201, extension 4466 (this is not a toll-free number), (e-mail address: Walter.Prybyla@hud.gov). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's environmental regulations are found at 24 CFR parts 50, 51, 55, and 58. This rule proposes changes to each of these parts.

Part 50 implements the National Environmental Policy Act (NEPA) and provides for HUD environmental review for all HUD policy and project actions, except those subject to part 58. Part 50 also applies to activities carried out by funding recipients subject to 24 CFR part 58 where: (1) Those recipients claim lack of legal capacity to assume environmental review responsibilities under part 58 and that claim is approved by HUD, (2) where an Indian tribe does not choose to perform the environmental review under 24 CFR 1000.20, or (3) where HUD otherwise determines that it will conduct the environmental review itself.

Part 51 provides certain environmental criteria and standards for determining project acceptability and any mitigating measures that might be needed. This part covers noise abatement, siting of assisted projects near hazardous operations handling explosive or flammable materials, and siting in relation to airfields.

Part 55 comprises HUD's rules for floodplain management. This part implements Executive Order 11988—Floodplain Management. Subpart C provides procedures for making determinations on floodplain management for assisted projects located within or proposed for floodplain locations.

Part 58 contains HUD's regulations applicable to funding recipients and entities that assume environmental review responsibilities where statutorily authorized for certain programs. Under 24 CFR 58.13, each responsible entity must have a certifying officer who acts as the official responsible for compliance with NEPA and other Federal environmental laws.

This rulemaking also proposes revisions to the environmental sections of 24 CFR part 91. Part 91 governs the Consolidated Plan process, a strategy to be followed by local jurisdictions in carrying out HUD programs and a management tool for assessing performance and tracking results. The Consolidated Plan builds on a participatory process among citizens, organizations, businesses, and other stakeholders partnering to provide affordable housing and community development (Subpart B).

Section 105(d) of the Native American Housing Assistance and Self-Determination Act (NAHASDA), 25 U.S.C. 4115(d), provides for waiver of environmental review provisions in Section 105. Section 105(d) states that:

The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section—

(1) Will not frustrate the goals of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*] or any other provision of law that furthers the goals of that Act;

(2) Does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;

(3) Is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1) of this section; and

(4) May be corrected through the sole action of the recipient.

Interim waiver procedures are contained in Notice CPD-04-08: "Waiving statutory environmental review requirements for the Indian Housing Block Grant Program for Tribes that have assumed environmental review responsibilities under 24 CFR part 58." Because of statutory requirements under NAHASDA, rulemaking on the issue of environmental waivers under NAHASDA is going to be one of the subjects of an upcoming negotiated rulemaking. (See "Indian Housing Block Grant Program; Notice of Proposed Negotiated Rulemaking Committee Membership," 71 FR 16004, 16005 (March 29, 2006).) The proposed rule resulting from that negotiated rulemaking will be published in the **Federal Register** in the future for public comment.

Recently enacted statutes provide for the use of electronic processes in government, where practicable. The Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. 7001 *et seq.*, provides for the legal validity of electronic signatures and electronic records, and also provides for consumer protection

relating to electronic disclosures of information. The Government Paperwork Elimination Act, Title XVII of Pub. L. 105-277, codified at 44 U.S.C. 3504 note (GPEA), requires that executive agencies provide for the option of electronic maintenance, submission, or disclosure of information, when practicable, instead of paper, and also that agencies allow for the use and acceptance of electronic signatures, when practicable. The E-Government Act of 2002, 44 U.S.C. 101 note, imposes certain duties on agencies regarding making information electronically available, establishes performance goals, and makes the Office of Management and Budget (OMB) responsible for governmentwide electronic initiatives. It also requires that agencies do not diminish access to government services for people that do not have access to computers or the Internet. Section 203 of the E-Government Act provides that OMB and the General Services Administration (GSA) shall take steps to allow interoperability among executive agencies when using electronic signatures, and that agencies shall ensure that their methods for use and acceptance of electronic signatures are compatible with those OMB and GSA policies.

The effort to better utilize electronic communication in the environmental review process, which HUD believes will make the process more accessible and user-friendly, is ongoing. As an initial step, the proposed rule would encourage environmental review records to be managed electronically and posted on agency Web sites to make them accessible to HUD staff and to the public.

The following item may be considered for a future rulemaking, but is not part of this proposed rule. HUD is considering modifying 24 CFR 50.3(i) (and 24 CFR 58.5(i)(2)) so that when any initial investigation by a qualified professional is required, such investigation shall be in accordance with ASTM International Standard E1527-05 entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

II. This Proposed Rule

24 CFR Part 50

HUD proposes to amend 24 CFR 50.4(b)(1) to clarify that flood insurance requirements generally must be met by purchasing insurance rather than self-insurance, except as authorized by law for state-owned projects in states

approved by the Director of the Federal Emergency Management Agency.

HUD proposes to amend 24 CFR 50.10(b) to reflect the current allocation of responsibilities for environmental policies and procedures within the Department and to improve oversight as part of HUD's compliance with NEPA and related laws and authorities. Specifically, this proposed amendment to HUD's environmental regulations would require that oversight for environmental protection be performed consistently and collaboratively with quality management reviews of field offices and on-site monitoring of clients. The name "Office of Community Viability" cited in the current regulations would be corrected to "Office of Environment and Energy" to reflect the correct institutional name of that office. The proposed rule would thereby conform the title of the office to that contained in the HUD Organizational Handbook 1100.3 REV 5, par. 5-13.

The rule would add new provisions on waivers of environmental requirements. With the aim of making the compliance process more efficient and easier for recipients, the revision would include a cross-reference to 24 CFR 5.110 and a new § 50.37 that states procedures for HUD approval of waivers from environmental regulations requested by a recipient.

The proposed rule would amend 24 CFR 50.16, "Decision points for policy actions." Specifically, a new decision point (the point at which an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS) must be completed) would be added. The new decision point would be HUD's approval of a waiver of environmental regulations.

The rule would amend § 50.17 by adding a decision point for HUD's determination to sign a release of a Declaration of Trust or a release of a Declaration of Restrictive Covenants regarding public housing agency (PHA) property that is the subject of an eminent domain lawsuit. PHA public housing property that has been assisted under the United States Housing Act of 1937 (1937 Act), 42 U.S.C. 1437 *et seq.*, is subject to a Declaration of Trust or Declaration of Restrictive Covenants that is recorded against the property and assures HUD that the property will be subject to the statutory long-term affordability restrictions and other HUD restrictions, including statutory prohibitions against disposition or demolition without HUD approval. When state or local agencies attempt, through eminent domain proceedings,

to take such PHA property, HUD must determine whether to voluntarily release its interests in the property. This is because state and local courts have no jurisdiction to hear suits for condemnation of federal interests in property and, therefore, HUD's interest in PHA property may not be taken in the eminent domain proceedings. However, if HUD releases its interests in PHA property, the PHA may enter into an agreement to transfer the property to the state or local agency. If the PHA does not enter into such an agreement, then since there is no longer any federal interest in the property, the state or local body may obtain title either by operation of law or by court decree that results from the filing and prosecution of the eminent domain proceeding. HUD's determination to voluntarily release its interests in the property is not itself a project or activity under the 1937 Act, and the environmental review regarding HUD's decision to release its interests is therefore not subject to 24 CFR part 58, but must be performed by HUD under part 50. The amendment to § 50.17, in establishing a decision point for this determination, reflects the applicability of part 50 to these actions.

Section 50.19(b)(15) of the currently codified rule provides a categorical exclusion for activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction. While not proposing any change to this section to specifically reference homeownership funds, this section covers homeownership vouchers because this section covers "activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction."

The proposed rule would remove 24 CFR 50.19(b)(18), a provision dealing with "improved area processing," a type of review that the Department no longer performs or requires.

The statutory prohibition on the use of HUD funds in the coastal barrier resources system at 24 CFR 50.4(c)(1) would be referenced in the following provisions: (1) Tenant-based assistance (24 CFR 50.19(b)(11)); (2) operating costs (24 CFR 50.19(b)(13)); (3) activities to assist homebuyers (24 CFR 50.19(b)(15)); and (4) housing pre-development costs. The statutory requirement to purchase and maintain national flood insurance protection for properties located within the special flood hazard area would be referenced in the provision for activities to assist homebuyers (24 CFR 50.19(b)(15)).

This proposed rule would add a new categorical exclusion at 24 CFR 50.19(b)(18), as well as at 24 CFR 58.35(b)(8), for the giving of

compensation assistance for loss during a Presidentially declared disaster. Such compensation benefit is not tied to any particular use of the funds. However, if the approval of compensation assistance imposes standards for construction or construction materials, manufactured housing, or occupancy, with respect to a beneficiary's property or a property that sustained damage or loss, but without requiring that any construction, repair, or other activity be carried out, a programmatic environmental assessment must be prepared. Such standards may be imposed by covenant on a beneficiary's property, or on a property that sustained loss or damage, as a condition of receiving compensation assistance; however, the exclusion applies only if no construction, repair, or any other particular activity is required to be performed as a condition of receiving the compensation. This categorical exclusion will enable more efficient recovery efforts by removing administrative burdens from localities during declared disasters.

The proposed rule would clarify a new 24 CFR 50.32(b) that, for Headquarters-administered programs, the field office program staff would conduct the environmental review, unless otherwise specified by the program Assistant Secretary (or Headquarters program staff). In addition, the rule would add a new 24 CFR 50.32(c) that would encourage HUD program offices to voluntarily post their environmental review record (ERR) documents on their Web sites for public review and comment and for the electronic record. Also, the rule would add a new 24 CFR 50.32(d) that would encourage HUD program offices to voluntarily use electronic submissions and notifications under this part. In order to increase Departmental electronic processing, current form HUD-4128, "Environmental Assessment and Compliance Findings for the Related Laws," and the accompanying "Sample Field Notes Checklist (SFNC)" will continue to be used for electronic communication and documentation.

The proposed rule would add a new 24 CFR 50.37 to establish circumstances under which HUD may grant a waiver of regulations in 24 CFR parts 50, 51, 55, and 58 where the standards of 24 CFR 5.110 are met and no unmitigated adverse environmental impact will result from a violation of the regulation being waived.

24 CFR Part 51

The proposed rule would replace the obsolete reference to "Special Environmental Clearance" in 24 CFR

51.104 and 51.105 with the currently used term "environmental assessment." The term "Special Environmental Clearance" was used historically by HUD in the Department's regulations implementing NEPA, 24 CFR parts 50 and 58. However, HUD no longer uses that term.

For the environmental review record of responsible entities' consideration of noise criteria and standards under 24 CFR 51.101(a)(2), the proposed rule at a new 24 CFR 51.101(a)(2)(i)(B) would encourage these entities to use, for their noise assessment, the HUD-recommended procedure or a comparable procedure when considering deviation from noise criteria and standards. The current recommended procedure is provided in the publication "Noise Guidebook," which is available on HUD's environmental Web site at: <http://www.hud.gov/offices/cpd/energyenviron/environment/resources/guidebooks/noise/index.cfm>.

HUD recognizes that the Federal Highway Administration (FHWA) Traffic Noise Model® (TNM) noise analysis tool for highway noise is a useful methodology that may potentially have applicability to noise analysis for HUD-assisted projects. Toward that end and with the intent of modernizing HUD's noise analysis guidelines, the Department in partnership with FHWA has agreed to obtain special acoustical analysis and expertise from the DOT Volpe National Transportation Systems Center to determine how the FHWA TNM and HUD noise analysis guidelines may be adjusted to meet HUD's regulatory noise requirements (24 CFR part 51, subpart B).

Because the term "Runway Protection Zone" is now used on maps issued by the Federal Aviation Administration (FAA) for civil airports, the proposed rule would replace in 24 CFR part 51, subpart D, the term "Runway Clear Zone" at civil airports with the term "Runway Protection Zone." The technical change would conform to the use of the term "Runway Protection Zones" (RPZ) for civil airports established by FAA Advisory Circular for Airport Design, AC 150/5300-13, CHG 2, page 140 (02/24/92). This rule would adopt the definition used in that Circular, and would adopt a separate definition of "clear zone" for military airfields used in Department of Defense regulations at 32 CFR 256.3.

24 CFR Part 55

The proposed rule would revise the definition of "substantial improvement" at 24 CFR 55.2(b)(8)(ii)(B) by adding to the current exclusion for historic

properties any property eligible to be listed in the National Register of Historic Places (NRHP), provided that the alteration of the structure would not preclude the structure's continued designation as a historic structure. This exclusion would conform to the exclusion contained in the definition of "substantial improvement" for the National Flood Insurance Program (44 CFR 59.1). The revision would provide consistency with the definition of historic property under Section 106 of the National Historic Preservation Act as a property listed in or eligible for listing in the NRHP.

HUD's experience has shown that combining public notices adds to greater efficiency, and that more specific guidance in this area is necessary. The proposed rule would clarify the provision on combining environmental notices at 24 CFR 55.10(a), with cross-references to further explanatory provisions at new subparagraphs 55.20(b)(4) and 55.20(g)(3). The purpose of this change is to provide regulatory guidance on environmental notices that are suitable to be combined.

The proposed rule would extend 24 CFR 55.12(a)(3) to apply to any HUD program involving the repair, rehabilitation, modernization, or improvement of existing multifamily housing projects. The current provision applies only to HUD mortgage insurance programs. The section will also clarify that proposed actions that are "substantial improvements" are, similar to new construction, subject to the full decision-making process at § 55.20.

The proposed rule would add an exclusion to 24 CFR 55.12(b)(5) for special projects directed to the removal of architectural barriers of properties located within floodplains. It would also revise 24 CFR 55.12(b)(2) to exempt minor repairs or improvements that are categorically excluded from environmental assessment under NEPA.

The proposed rule would expand the current exclusion at 24 CFR 55.12(c)(1) to include the categorical exclusions listed at 24 CFR 58.35(b) and 24 CFR 50.19. The exclusions listed generally cover "soft costs" having no potential effects on the floodplain and, therefore, do not warrant floodplain management compliance with part 55. This amendment would merely conform the exclusion in 24 CFR part 55 to the exclusions in 24 CFR 58.35(b) and 50.19, which already indicate the inapplicability of related authorities, including Executive Order 11988 on Floodplain Management, as implemented by 24 CFR part 55.

The proposed rule would remove the obsolete provisions of 24 CFR

55.12(c)(9) and (c)(10). As to § 55.12(c)(9), HUD terminated subdivision processing and approval in a final rule published on August 3, 1993 (58 FR 41328). The reciprocity provision of subparagraph (c)(9) has not been used since that time. Section 55.12(c)(10) relates to the effect of part 55 on actions pending on May 23, 1994, the effective date of the final rule published on April 21, 1994, at 59 FR 19100. This provision is no longer necessary.

The proposed rule would revise 24 CFR 55.20 to provide guidance on combining certain legal notices related to floodplains to increase the efficiency of environmental reviews and eliminate confusion regarding which notices can be combined. Accordingly, this proposed rule would add a new subparagraph 55.20(b)(4) to provide rules for combining the floodplain management notice with the EIS or notice of availability of a draft EIS. A new subparagraph 55.20(g)(3) would provide guidance on combining the floodplain management notice with either the notice of availability of a final EIS or with the notice of FONSI. The floodplain management notice explains to the public the determination that there are no practicable alternatives to locating the proposal in the floodplain.

24 CFR Part 58

The proposed rule would remove the word "pilot" from 24 CFR 58.1(b)(8). The housing finance agency risk-sharing program is now authorized as a regular HUD program at 24 CFR part 266, rather than as a pilot project.

The proposed rule at 24 CFR 58.2(a)(4) would clarify the definition of "project" for the purpose of compliance with limitations on actions during the NEPA or environmental clearance process as required by Council on Environmental Quality (CEQ) procedures (40 CFR 1506.1 and 1502.2(f)) and HUD regulations (24 CFR 58.22). NAHASDA, the Native American Housing Assistance and Self-Determination Act, would be added to the list of abbreviations at paragraph (b) of this section. The abbreviation RROF would be corrected to read RROF/C, when referring to a Request for Release of Funds and Certification.

The proposed rule would add the same clarification of flood insurance self-insurance that appears in proposed § 50.4(b)(1). Accordingly, the rule proposes to add a new § 58.6(a)(4) that contains the same clarification; that flood insurance requirements generally must be fulfilled by the purchase of insurance rather than self-insurance, except as authorized by law for assistance to state-owned projects

within states approved by the Director of FEMA.

The proposed rule would clarify the provision on certifying officers at 24 CFR 58.13. The term "certifying officer (CO)" has been interpreted to mean the "chief elected official" of the government (local, tribal, or state). The change would remove any question regarding those cases where the "chief elected official" or the legislative body of the responsible entity (RE) authorizes a substitute official provided that the substitute official has authority to provide consent on behalf of the RE to federal court jurisdiction and to bind the RE financially if there is a judgment in the performance of environmental responsibilities under this part. As required by NAHASDA (25 U.S.C. 4226), the rule would designate the Director of the Department of Hawaiian Home Lands as the certifying officer for the program of housing assistance for Native Hawaiians under NAHASDA.

The proposed rule would amend guidance on tiering of environmental reviews and assessments at 24 CFR 58.15 to emphasize the limitation on activities pending environmental clearance. The limitation applies, for example, in the case of multiyear funding cycles where recipients select sites only after the recipient has received an approval of the environmental certification and request for release of funds. The commitment or expenditure of funds would not be allowed for activities that constitute a development decision (including acquisition and disposition of real estate) that affects the physical condition of specific project areas or building sites, until the responsible entity has completed its site-specific analysis and compliance with this part and documented its environmental review record (24 CFR 58.38). At any time, the recipient may commit or expend funds for exempt activities documented, in accordance with 24 CFR 58.34(b) and categorically excluded activities under 24 CFR 58.35(b).

Section 58.35(b)(5) of the currently codified rule provides a categorical exclusion for activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction.

Proposed 24 CFR 58.19 would complement proposed 24 CFR 50.37 by providing procedures for granting a waiver of part 58 regulations in cases of violations of environmental regulations where there is good cause to grant the waiver and where no unmitigated environmental harm will result. This section does not apply to statutory waivers under NAHASDA, for which

HUD will propose a regulation in the future after negotiated rulemaking pursuant to NAHASDA's requirements (see 25 U.S.C. 4116(b)(2)) on that and other issues.

In cases where a project is assisted with funds under two or more programs that each require an RROF/C, the revision to the second sentence of 24 CFR 58.22(a) would allow a recipient or other participant in the development process to commit non-HUD funds on or to undertake an activity or project once the first RROF/C has been approved. This technical correction would remove the current limitation on commitment of funds and facilitate use of the categorical exclusion under Section 58.35(b)(7) discussed in the next paragraph.

In cases where the scope of the original project and environmental conditions remain unchanged and the Section 58.47 reevaluation of the project is determined to be unnecessary, the proposed rule would revise 24 CFR 58.35(b)(7) to permit flexibility when adding supplemental funding to a previously environmentally approved project irrespective of the source of the supplemental funding. This provision would be made to conform with HUD's long-held policy at 24 CFR 50.36, which states that a change only in the amount of financing or mortgage insurance involved does not normally require the environmental review to be re-evaluated or updated.

This proposed rule would add a new 24 CFR 58.38(c) to encourage the responsible entity to manage and post the Environmental Review Record (ERR) on its Web site. The posting should include information on where and how any relevant ERR non-electronic records are made available for public review and copying, and the name and telephone number of a point of contact that is to receive public inquiries for assistance and comment.

The proposed rule would add a new 24 CFR 58.38(d) to encourage the voluntary use of electronic submissions and notifications under this part, including existing environmental forms (or narrative letters).

The proposed rule would include in the last sentence of 24 CFR 58.43(c) a reference to locally declared emergencies. The provision for locally declared emergencies was added on September 29, 2003 (68 FR 56129) by revising 24 CFR 58.33(b). The proposed amendment to 24 CFR 58.43(c) would make this section consistent with 24 CFR 58.33(b) by including the provision for locally declared emergencies.

Finally, the proposed rule would correct and update legal citations in part

58. In § 58.1(b)(8), the citation would be updated, from a note to 12 U.S.C. 1707, to 12 U.S.C. 1715z–22(c)(9). In § 58.5(a)(1), the citation to 16 U.S.C. 470 would be restated as 16 U.S.C. 470f.

24 CFR Part 91

The proposed rule would amend the citizen participation and consultation provision for the jurisdiction’s consolidated plan. The rule would encourage jurisdictions to consult with non-profit and for-profit organizations and PHAs that receive HUD grant awards, in order to facilitate compliance with environmental review requirements for housing and

community development projects within the jurisdiction. As a service to these entities, jurisdictions would be authorized to perform the environmental review as responsible entities under 24 CFR part 58. Where jurisdictions require reimbursement of costs, remuneration for environmental review services rendered by jurisdictions may be available from the recipient’s HUD program grant, in accordance with 24 CFR 58.23.

III. Findings and Certifications

Paperwork Reduction Act

With one exception, the information collection requirements in this proposed

rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) and assigned OMB control number 2506–0087.

The additional information collection requirements contained in this rule have been submitted to OMB under the PRA. In accordance with the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Item	Number of respondents	Frequency	Total responses	Hours per response	Total hours
Form HUD 7015.15	18,785	1	18,785	0.6	11,271
Waiver Requests	6	1	6	2.0	12
Totals	18,791	2	18,791	2.6	11,283

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this 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.

OMB and HUD invite interested persons to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today’s publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today’s publication. This time frame does not affect the deadline for comments to OMB and HUD on the proposed rule, however. Comments must refer to the

proposal by name and docket number (FR–4954) and must be sent to: OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax number (202) 395–6947; and Marie Young, Office of Community Planning and Development, Room 7251, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a “significant regulatory action,” as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number).

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National

Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of Regulations, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

In developing the proposed rule, HUD has attempted to minimize the regulatory burden placed on responsible

entities and other recipients when complying with environmental procedures. The proposed rule would encourage, but not require, electronic submission and electronic notification of environmental documents. A major objective is to achieve efficiencies through the more rapid transmission and processing of environmental clearances of HUD financial assistance, including certifications and requests for release of funds. The rule would add some exclusions from environmental procedures. The rule would remove a current limitation and thereby improve the use of simplified procedures for subsequent supplementary assistance for a previously approved project, where one or more responsible entities other than the original responsible entity wish to provide the additional funding. The rule would make a number of corrections and remove obsolete references, thereby eliminating unclear and/or inconsistent texts. The rule proposes to authorize the use of the abbreviated process for floodplain management decision-making for all of HUD's rehabilitation programs. The current regulations limit the use of the abbreviated decision-making process to repairs financed under HUD's mortgage insurance programs.

Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and that an initial regulatory flexibility analysis is not required.

Notwithstanding the determination that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempts state law within the meaning of the Executive Order.

List of Subjects

24 CFR Part 50

Environmental impact statements, Environmental protection, Environmental policies and review procedures, Multifamily housing programs, Grant programs for housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 51

Environmental standards, Noise abatement and control.

24 CFR Part 55

Floodplains, Reporting and recordkeeping requirements.

24 CFR Part 58

Community development block grants, Environmental impact statements, Environmental protection, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 91

Grant programs—housing and community development, Low- and moderate-income housing, Reporting and recordkeeping requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs in this rule are: 14.103–14.906.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 50, 51, 55, 58, and 91 to read as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for 24 CFR part 50 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

Subpart A—General: Federal Laws and Authorities

2. Amend § 50.2(b) by adding the following definition of "NAHASDA" in proper alphabetical order to read as follows:

§ 50.2 Terms and abbreviations.

* * * * *

(b) * * *

NAHASDA—Native American Housing Assistance and Self-Determination Act.

* * * * *

Subpart B—General Policy: Responsibilities and Program Coverage

3. Revise § 50.4(b)(1) to read as follows:

§ 50.4 Related federal laws and authorities.

* * * * *

(b) *Flood insurance, floodplain management, and wetland protection.*
(1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) and the National Flood Insurance Reform Act of 1994 (Pub. L. 103–325, 108 Stat. 2160). Flood insurance requirements, however, cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the director of FEMA.

* * * * *

4. Revise § 50.10(b) to read as follows:

§ 50.10 Basic environmental responsibility.

* * * * *

(b) The Assistant Secretary for Community Planning and Development (A/S CPD), represented by the Office of Environment and Energy, whose Director shall serve as the Departmental Environmental Clearance Officer (DECO), is assigned the overall Departmental responsibility for environmental policies and procedures for compliance with NEPA and the related laws and authorities. Furthermore, the A/S CPD, represented by the DECO, is responsible for Departmental oversight to ensure HUD programs are carried out in compliance with NEPA and the related laws and authorities. To coordinate environmental oversight with the quality management reviews of field offices and on-site monitoring of clients, managers of the various HUD program offices undertaking such activities shall invite the DECO or his designee to participate in such activities. To the extent permitted by applicable laws and the Council for Environmental Quality (CEQ) regulations at 40 CFR chapter V, the A/S CPD may approve waivers and exceptions or establish criteria for exceptions from the requirements of this part and 24 CFR parts 51, 55, and 58, including waivers of regulations, in accordance with §§ 5.110 and 50.37 of this chapter.

Subpart C—General Policy: Decision Points

5. Revise § 50.16 to read as follows:

§ 50.16 Decision points for policy actions.

Either an Environmental Assessment (EA) and Finding of No Significant

Impact (FONSI) or an Environmental Impact Statement (EIS) on all policy actions not meeting the criteria of § 50.19 shall be completed prior to the approval action. Policy actions include all proposed Federal Register policy documents and other policy-related federal actions (40 CFR 1508.18). Such actions include approvals of waivers from environmental regulations. The decision as to whether a proposed policy action is categorically excluded from an EA shall be made by the Program Environmental Clearance Officer (PECO) in Headquarters as early as possible. Where the PECO has any doubt as to whether a proposed action qualifies for exclusion, the PECO shall request a determination by the A/S CPD. The EA and FONSI may be combined into a single document.

6. In § 50.17 redesignate paragraph (h) as paragraph (i) and add a new paragraph (h) to read as follows:

§ 50.17 Decision points for projects.

* * * * *

(h) HUD execution of release. HUD's determination to execute a release of a Declaration of Trust, a release of a Declaration of Restrictive Covenants, or both, in order to release HUD's interests in public housing agency property that is the subject of an eminent domain action.

* * * * *

Subpart D—General Policy: Environmental Review Procedures

7. Amend § 50.19 by revising paragraphs (b)(11), (b)(13), (b)(15), (b)(16), and (b)(18), to read as follows:

§ 50.19 Categorical exclusions not subject to the federal laws and authorities cited in § 50.4.

* * * * *

(b) * * *

(11) Tenant-based rental assistance; however, compliance with 24 CFR 50.4(c)(1) is required.

* * * * *

(13) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs; however, compliance with 24 CFR 50.4(c)(1) is required and in the case of equipment, compliance with 24 CFR 50.4(b)(1) is required.

* * * * *

(15) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buydowns, and similar activities that

result in the transfer of title; however, compliance with 24 CFR 50.4(b)(1) and (c)(1) is required.

(16) Housing pre-development costs including legal, consulting, developer, other costs related to site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities that do not have a physical impact; however, compliance with 24 CFR 50.4(c)(1) is required.

* * * * *

(18) Giving of compensation assistance for loss during a Presidentially declared disaster only when that compensation benefit is not tied to any particular use of the funds. However, if the approval of compensation assistance imposes standards for construction or construction materials, manufactured housing, or occupancy, with respect to a beneficiary's property or a property that sustained damage or loss, but without requiring that any construction, repair, or other activity be carried out, a programmatic environmental assessment must be prepared. Such standards may be imposed by covenant on a beneficiary's property, or on a property that sustained loss or damage, as a condition of receiving compensation assistance; however, the exclusion applies only if no construction, repair, or any other particular activity is required to be performed as a condition of receiving the compensation.

* * * * *

Subpart E—Environmental Assessments and Related Reviews

8. In § 50.32 redesignate the current undesignated paragraph as (a) and add new paragraphs (b), (c), and (d) to read as follows:

§ 50.32 Responsibility for environmental processing.

* * * * *

(b) Applications Received by Headquarters Offices. The field office program staff is responsible for the performance of the environmental review under this part for HUD assistance administered by Headquarters program staff who are primarily responsible for receiving, evaluating, and recommending to their Assistant Secretary the approval of applications made by applicants directly to HUD Headquarters Offices. The approving official in the HUD field office shall comply with § 50.11 and, in addition, assure (unless Headquarters program procedures do not require) that the form HUD-4128 and Sample Field

Notice Checklist (SFNC) are immediately forwarded by e-mail or fax to the Headquarters program office responsible for administering the program. In addition, the approving official in the HUD field office may post these documents on the Web site of the HUD field office serving the area in which the project is located.

(c) Posting on Web site. HUD program offices are encouraged to voluntarily post their environmental review record (ERR) documents on their Web sites for public review and comment and for the electronic record. If the ERR includes non-electronic records for the project, the posting on the Web site should indicate where and when such records are available for public review and copying. In either case, the Web site posting should indicate the name, phone number, and e-mail address of the point of contact that is to receive public inquiries for assistance or comment.

(d) Electronic submissions and notifications. HUD encourages the voluntary use of electronic submissions and notifications under this part. Current form HUD-4128, Environmental Assessment and Compliance Findings for the Related Laws, and the accompanying SFNC, will be used for electronic communication and documentation according to the following procedures:

(1) Field office staff preparing form HUD-4128 and the SFNC electronically must use the electronically fillable forms in the Portable Document Format (PDF) available on HUDclips.

(2) For electronic submission, the form must be accessed, filled in, saved, and e-mailed using a HUD office computer system accessed via security protocols designed to restrict access to only authorized users. A user name and password authentication system will suffice for this purpose.

(3) The appropriate Headquarters officials must at all times be informed of the field office personnel authorized to submit the form HUD-4128 and accompanying SFNC electronically and the e-mail addresses of those personnel. Completed forms must be e-mailed from the authorized work address by the authorized personnel, using their HUD e-mail account, and submitted under their correct user name.

(4) HUD will maintain the electronic version of the forms HUD-4128 and the accompanying SFNC with all associated information in a manner accessible to the public, to the same extent as if they were non-electronic forms. HUD will retain these records for the same length of time and with the same degree of

accessibility as it does for non-electronic forms.

9. Add § 50.37 to subpart E to read as follows:

§ 50.37 Waivers.

Regulatory waivers. The HUD Assistant Secretary for Community Planning and Development (A/S CPD) may grant a waiver of regulations in 24 CFR parts 50, 51, 55, and 58 using the same standards that apply to waivers granted under 24 CFR 5.110 and where no unmitigated adverse environmental impact has resulted or will result from a violation of the regulation being waived. Waiver applicants must state the following in writing: The regulation involved; all relevant facts; a chronology of events; whether a violation has occurred or will occur; and any other pertinent facts about the requirement proposed for waiver. Applicants must provide evidence that good cause exists to justify the extraordinary action of granting a waiver. The submission must be addressed to the appropriate Program Director in the HUD field office serving the area within which the project is located, or to the Administrator in the Area Office of Native American Programs for the area. In addition, waiver applicants must supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by this part. In the case of violations under 24 CFR part 58, see § 58.19.

PART 51—ENVIRONMENTAL CRITERIA AND STANDARDS

10. The authority citation for 24 CFR part 51 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart B—Noise Abatement and Control

11. In § 51.101 redesignate paragraph (a)(2)(ii) as paragraph (a)(2)(iii) and add a new paragraph (a)(2)(ii) to read as follows:

§ 51.101 General policy.

- (a) * * *
(2) * * *

(ii) For the environmental review record, responsible entities are encouraged to use for their noise assessment the current HUD recommended procedure or a comparable procedure when considering deviation from noise criteria and standards.

* * * * *

12. In § 51.104, revise paragraphs (b)(1)(i) and (b)(1)(iii) to read as follows:

§ 51.104 Special Requirements.

* * * * *

- (b) * * *

(1) *Normally unacceptable noise zone.* (i) All projects located in the Normally Unacceptable Noise Zone require an environmental assessment (EA), except that an EIS is required for a proposed project located in a largely undeveloped area, or where the HUD action is likely to encourage the establishment of incompatible land use(s) in this noise zone.

* * * * *

(iii) All other projects in the Normally Unacceptable Zone require an environmental assessment (EA), except where an EIS is required for other reasons pursuant to HUD environmental policies.

* * * * *

13. Revise § 51.105(a)(2) to read as follows:

§ 51.105 Exceptions.

- (a) * * *

(2) The project has undergone an environmental assessment (EA) and has received the concurrence of the Environmental Clearance Officer.

* * * * *

14. Revise the heading of Subpart D to read as follows:

Subpart D—Siting of HUD-Assisted Projects in Runway Protection Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

15. Revise § 51.300 to read as follows:

§ 51.300 Purpose.

It is the purpose of this subpart to promote compatible land uses around civil airports and military airfields by identifying suitable land uses for Runway Protection Zones at civil airports and Clear Zones and Accident Potential Zones at military airfields and by establishing them as standards for providing HUD assistance, subsidy, or insurance.

16. Amend 24 CFR 51.301 as follows:

- a. Redesignate current paragraph (d) as paragraph (e) and revise the newly redesignated paragraph (e); and
b. Add a new paragraph (d) to read as follows:

§ 51.301 Definitions.

* * * * *

(d) *Clear Zone.* The area immediately beyond the end of a runway, which possesses a high potential for accidents, and has traditionally been acquired by the Government in fee and kept clear of obstructions to flight. The standards for Clear Zones for military airfields are

established by DOD Instruction 4165.57, 32 CFR part 256.

(e) *Runway Protection Zone.* An area off the runway end to enhance the protection of people and property on the ground. The standards for Runway Protection Zones for civil airports are established by FAA regulations at 14 CFR part 152 and FAA Advisory Circular 150/5300–13.

17. In § 51.303, revise the introductory text of paragraph (a) and paragraphs (a)(2) and (a)(3) to read as follows:

§ 51.303 General Policy.

* * * * *

(a) HUD policy for actions in Runway Protection Zones and Clear Zones.

* * * * *

(2) If a project proposed for HUD assistance, subsidy, or insurance is one that will not be frequently used or occupied by people, HUD policy is to provide assistance, subsidy, or insurance only when written assurances are provided to HUD by the airport operator to the effect that there are no plans to purchase the land involved with such facilities as part of a Runway Protection Zone or Clear Zone acquisition program.

(3) Special notification requirements for Runway Protection Zones and Clear Zones. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Protection Zone or Clear Zone, HUD (or the responsible entity or recipient under 24 CFR part 58) shall advise the buyer that the property is in a Runway Protection Zone or Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

* * * * *

18. Revise § 51.304(b) to read as follows:

§ 51.304 Responsibilities.

* * * * *

(b) The following persons have the authority to approve actions in Runway Protection Zones and Clear Zones:

(1) For programs subject to environmental review under 24 CFR part 58: The Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: The Program Assistant Secretary.

19. In § 51.305, revise paragraphs (b), (c), and (d) to read as follows:

§ 51.305 Implementation.

* * * * *

(b) Acceptable data on Runway Protection Zones, Clear Zones, and Accident Potential Zones. The only Runway Protection Zones, Clear Zones, and Accident Potential Zones that will be recognized in applying this part are those provided by the airport operators and which for civil airports are defined in accordance with FAA regulations 14 CFR part 152 or, for military airfields, DOD Instruction 4165.57, 32 CFR part 256. All data, including changes, related to the dimensions of Runway Protection Zones for civil airports shall be verified with the nearest FAA Airports District Office before use by HUD.

(c) Changes in Runway Protection Zones, Clear Zones, and Accident Potential Zones. If changes in the Runway Protection Zones, Clear Zones, or Accident Potential Zones are made, the field offices shall immediately adopt these revised zones for use in reviewing proposed projects.

(d) The decision to approve projects in the Runway Protection Zones, Clear Zones, and Accident Potential Zones must be documented as part of the environmental assessment or, when no assessment is required, as part of the project file.

PART 55—FLOODPLAIN MANAGEMENT

20. The authority citation for 24 CFR part 55 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 4001–4128; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117.

Subpart A—General

21. Revise § 55.2(b)(8)(ii)(B) to read as follows:

§ 55.2 Terminology.

* * * * *

- (b) * * *
- (8) * * *
- (ii) * * *

(B) Any alteration of a structure that is either listed on or eligible to be listed on the National Register of Historic Places, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

* * * * *

Subpart B—Application of Executive Order on Floodplain Management

22. Amend § 55.10 by adding a new sentence at the end of paragraph (a) to read as follows:

§ 55.10 Environmental Review procedures under 24 CFR parts 50 and 58.

(a) * * * HUD encourages combining floodplain management notices and processes with other environmental notices and processes, and provides guidance on combining such notices at §§ 55.20(b)(4) and 55.20(g)(3).

* * * * *

23. Amend § 55.12 as follows:

- (a) Revise paragraph (a)(3);
- (b) Revise paragraph (b)(2);
- (c) Add a new paragraph (b)(5);
- (d) Revise the introductory text of paragraph (c) and paragraph (c)(1);
- (e) Remove paragraphs (c)(9) and (c)(10) and redesignate paragraphs (c)(11) and (c)(12) as paragraphs (c)(9) and (c)(10), respectively, to read as follows:

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) * * *

(3) Actions under any HUD program involving the repair, rehabilitation, modernization, or improvement of existing multifamily housing projects (including nursing homes, board and care facilities, and intermediate care facilities) and existing one-to-four family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, that the action does not involve a conversion from nonresidential to residential land use, and that the footprint of the structure and paved areas is not significantly increased. Proposed actions that meet the threshold of “substantial improvement” are subject to the full decision-making process at § 55.20.

(b) * * *

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for “substantial improvement” under § 55.2(b)(8) and are categorically excluded from an environmental assessment under §§ 50.20(a)(2)(i) and 58.35(a)(3)(i) of this chapter;

* * * * *

(5) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly persons and persons with disabilities.

(c) This part shall not apply to the following categories of proposed actions:

- (1) HUD-assisted activities described in 24 CFR 58.34, 24 CFR 58.35(b), and 24 CFR 50.19;

* * * * *

Subpart C—Procedures for Making Determinations on Floodplain Management

24. Amend § 55.20 by adding new paragraphs (b)(4) and (g)(3) to read as follows:

§ 55.20 Decision-making process.

* * * * *

(b) * * *

(4) The floodplain management notice at paragraph (b) of this section may be combined with either the notice of intent to prepare an environmental impact statement (EIS), or the notice of availability for public comment of the draft EIS where applicable, but in either case the combined notice text must comply with requirements of paragraphs (b)(1) through (3) of this section. The title of the combined notice for public comment also must include the words “compliance with Executive Order 11988, Floodplain Management.” In addition, the floodplain management notice at paragraph (b) of this section may be published separately but contemporaneously with a notice of intent to prepare an EIS or a notice of availability for public comment of a draft EIS. All comments received must be responded to in writing prior to taking any approval action. Comments received and copies of written responses are to be maintained in the environmental review record.

* * * * *

(g) * * *

(3) The floodplain management notice at paragraph (g) of this section may be combined either with the notice of availability for public comment of the final EIS or the notice of finding of no significant impact to the environment (FONSI), where applicable, but in either case the combined notice text must comply with the requirements of paragraphs (g)(1) through (3) of this section. The title of the combined notice for public comment also must include the words “compliance with Executive Order 11988, Floodplain Management.” In addition, the floodplain management notice at paragraph (g) of this section may be published separately but contemporaneously with the notice of FONSI or the notice of availability for public comment of a final EIS for public comment. All comments received must be responded to in writing prior to taking any approval action. Comments received and copies of written responses are to be maintained in the environmental review record.

* * * * *

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

25. The authority citation for 24 CFR part 58 continues to read as follows:

Authority: 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O. 11991, 3 CFR 1977 Comp., p. 123.

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

26. Revise § 58.1(b)(8) to read as follows:

§ 58.1 Purpose and applicability.

* * * * *

(b) * * *

(8) The FHA Multifamily Housing Finance Agency Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9) (12 U.S.C. 1715z–22(c)(9));

* * * * *

27. Amend 24 CFR 58.2 by:

(a) Revising paragraph (a)(4);

(b) Redesignating paragraphs (b)(10) through (b)(15) as paragraphs (b)(11) through (b)(16), respectively;

(c) Adding a new paragraph (b)(10); and

(d) Revising newly redesignated paragraph (b)(16) to read as follows:

§ 58.2 Terms, abbreviations, and definitions.

(a) * * *

(4) *Project* means an activity or a group of integrally related activities designed by the recipient to accomplish, in whole or in part, a specific objective. The date on which a project becomes subject to the limitations on project actions under this part is: the date of receipt by HUD or a responsible entity of a proponent's proposal or application for federal assistance for identified property proposed for acquisition, disposition, rehabilitation, conversion, leasing, repair or construction, or any combination; or in the absence of such an application, the initial indication of the recipient's approval of a specific site for assistance under the program. For HUD congressional special purpose grants, it is the date the President signs into law the appropriation bill containing the grant. If there is any question, consult the Assistant Secretary for Community Planning and Development. Limitations on project actions during the NEPA or environmental clearance process are

required by CEQ regulations (40 CFR 1506.1 and 1502.2(f)) and 24 CFR 58.22.

* * * * *

(b) * * *

(10) NAHASDA—Native American Housing Assistance and Self-Determination Act of 1996, as amended;

* * * * *

(16) RROF/C—Request for Release of Funds and Certification.

28. Revise § 58.5(a)(1) to read as follows:

§ 58.5 Related Federal laws and authorities.

* * * * *

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470f and 470h–2).

* * * * *

29. Add a new § 58.6(a)(4) to read as follows:

§ 58.6 Other requirements.

* * * * *

(a) * * *

(4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Director of FEMA.

* * * * *

Subpart B—General Policy: Responsibilities of Responsible Entities

30. Amend § 58.13 by removing the word “and” at the end of paragraph (a); replacing the period at the end of paragraph (b) with a semi-colon and the word “and”; and adding a new paragraph (c) to read as follows:

§ 58.13 Responsibilities of the certifying officer (CO).

* * * * *

(c) Be the chief elected official (CEO) of the government (local, tribal, or state). The chief elected official or legislative body of the RE may authorize the Certifying Officer's legal responsibility to reside with another official of the RE if the other official is acceptable. For purposes of being authorized to carry out this responsibility, HUD requires that the substituted official provide evidence, in the form of a formal delegation by the chief elected official or resolution by the legislative body of the RE, that the substituted official has the authority to consent on behalf of the chief elected official to federal court jurisdiction and to bind the RE to satisfy any judgment entered in federal court relating to the RE's performance of

environmental responsibilities under this part. NAHASDA designates the Director of the Department of Hawaiian Home Lands as the certifying officer (25 U.S.C. 4226) for the program of housing assistance for Native Hawaiians.

31. Amend 24 CFR 58.15 by designating the current undesignated paragraph as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 58.15 Tiering.

* * * * *

(b) The recipient shall not commit or expend funds for activities that constitute a development decision (including acquisition and disposition of real estate) that affects the physical condition of specific project areas or building sites, until the responsible entity has completed its site-specific analysis and compliance with this part. At any time, the recipient may commit or expend funds for exempt activities documented in accordance with § 58.34(b), as well as for categorically excluded activities under § 58.35(b).

32. Add § 58.19 to subpart B to read as follows:

§ 58.19 Waivers.

(a) *Regulatory waivers of requirements of part 58.* Waiver applicants must describe in writing the reason for the waiver request and comply with paragraphs (c) and (d) of this section. The waiver request should be addressed to the appropriate Program Director in the HUD field office in whose area the relevant project is located, or to the Administrator in the Area Office of Native American Programs for the area. The waiver request must contain:

(1) All relevant facts required for HUD to make the determination required in 24 CFR 50.37, including the chronology of events, the requirement proposed for waiver, the RE's ERR for the project, if any, and any other environmental information or analysis done by the recipient or a contractor;

(2) Evidence that good cause exists to justify the extraordinary action of granting a waiver;

(3) A statement citing the section of 24 CFR part 58 to be waived;

(4) Any inquiries or concerns raised by individuals or organizations that are interested in or may be affected by the environmental impacts of the project as well as any agency having legal jurisdiction over the project or expertise related to the environmental impacts of the project; and

(5) All available, relevant information necessary for HUD to perform any environmental review required by 24

CFR part 50 for approval of waivers from HUD environmental regulations.

(b) *Single waiver request.* All required information necessary for HUD to process the waiver request for project activities covered by the request must be aggregated into a single waiver request.

(c) *Prior to approval.* Until the Assistant Secretary for Community Planning and Development has approved the waiver, waiver applicants must:

(1) Not acquire, rehabilitate, demolish, convert, lease, repair, or construct property, nor commit or expend HUD or any non-HUD funds for these project activities with respect to any eligible project property, from the time the waiver request is submitted until HUD written approval of the waiver is received for the project covered by the waiver request;

(2) Cease all choice-limiting actions and require project participants (including public or private non-profit or for-profit entities, contractors, and subcontractors) under their jurisdiction or control to cease all such actions on the project once a written request for waiver is made to HUD. No choice-limiting actions may occur after that date. Work that is proceeding in accordance with pre-existing legally binding commitments is not required to be stopped unless there is little or no penalty for halting the work. Work may recommence upon receipt of written HUD approval of the waiver request; and

(3) Carry out any mitigating measures required by HUD or select an alternate eligible project property or project.

Subpart C—General Policy: Environmental Review Procedures

33. In § 58.22, revise the second sentence of paragraph (a) to read as follows:

§ 58.22 Limitations on activities pending clearance.

(a) * * * In addition, until an RROF and related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

* * * * *

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation, and Classification

34. Amend 24 CFR 58.35 by revising paragraph (b)(7) and by adding a new paragraph (b)(8) to read as follows:

§ 58.35 Categorical exclusions.

* * * * *

(b) * * *
(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part or under 24 CFR part 50, if the RE for the supplemental assistance under this part determines that reevaluation of the original environmental finding is not required under § 58.47. If the RE for the supplemental assistance is not the RE for the original assistance, or if the original environmental compliance was prepared by HUD under 24 CFR part 50, the subsequent RE must review the original ERR and determine that reevaluation is not required under § 58.47 and then must adopt the original ERR, including any special conditions and environmental mitigation required for the project, and record the adoption in its own ERR.

(8) Giving of compensation assistance for loss during a Presidentially declared disaster only when that compensation benefit is not tied to any particular use of the funds. However, if the approval of compensation assistance imposes standards for construction or construction materials, manufactured housing, or occupancy, with respect to a beneficiary's property or a property that sustained damage or loss, but without requiring that any construction, repair, or other activity be carried out, a programmatic environmental assessment must be prepared. Such standards may be imposed by covenant on a beneficiary's property, or a property that sustained loss or damage, as a condition of receiving compensation assistance; however, the exclusion applies only if no construction, repair, or any other particular activity is required to be performed as a condition of receiving the compensation.

* * * * *

35. Amend § 58.38 by adding new paragraphs (c) and (d) to read as follows:

§ 58.38 Environmental review record.

* * * * *

(c) *Posting on Web site.* REs are encouraged to post ERR documents on their Web sites for public review and comment and for the electronic record. If the ERR includes non-electronic

records for the project, the posting on the Web site should indicate where and when such records are available for public review and copying. In either case, the Web site posting should indicate the name, phone number, and email address of the point of contact that is to receive public inquiries for assistance or comment.

(d) *Electronic submissions and notifications.* HUD encourages the voluntary use of electronic submissions and notifications under this part. Current form HUD-7015.15, "Request for Release of Funds and Certification," as well as current form HUD-7015.16, "Authority to Use Grant Funds," (or narrative letter), will be used for electronic communication and documentation under the following procedures:

(1) The RE must identify the Certifying Officer and provide his or her email address to the relevant HUD field office. The RE must communicate to HUD immediately any and all updates or changes to this information.

(2) The RE must establish a computer system with access appropriately controlled by a reasonably secure username and password authentication protocol, and must demonstrate to HUD that it has taken reasonable steps to limit access to the computer system. HUD will have the right to conduct a security audit of the computer system at any time.

(3) The Certifying Official must use HUD-provided forms in electronically fillable Portable Document Format (PDF).

(4) The Certifying Official may electronically submit form HUD-7015.15 by downloading the electronic form from either the HUD environmental office Web site (<http://www.hud.gov/offices/cpd/energyenviron/environment/compliance/forms/index.cfm>) or HUDclips (<http://www.hudclips.org>) in PDF, filling it out on the authorized, secure computer system, saving it to that system, and emailing it to HUD as an email attachment from the access-limited, reasonably secure system described in paragraph (d)(2) of this section. The email with the forms attached must come from the Certifying Official's official email address. If the correct email address does not appear in the header of the emailed message to which the forms are attached, HUD will not accept the submission.

(5) The HUD Authorizing Official may email form HUD-7015.16 to the Certifying Officer.

(6) The electronic submission protocols described in this section are deemed to provide the same degree of

identification, authentication, and intent as a signature on paper, and will suffice for all purposes for which the forms HUD-7015.15 and 7015.16 are used.

(7) The RE must maintain the electronic version of the forms HUD-7015.15 and 7015.16 with all associated information in a manner accessible to the public, to the same extent as if they were non-electronic forms. Retention of these records is required for the same length of time and with the same degree of accessibility as for non-electronic records. The forms and associated information must be retained in a manner that allows the public to view or download them from the RE's Web site.

36. Revise the heading to subpart E to read as follows:

Subpart E—Environmental Review Process: Environmental Assessments (EAs)

37. Revise § 58.43(c) to read as follows:

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

* * * * *

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF/C. Where § 58.33(b) is applicable, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds that will be used in Presidentially declared disaster areas or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

38. The authority citation for 24 CFR part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

Subpart B—Citizen Participation and Consultation

39. Add § 91.100(d) to read as follows:

§ 91.100 Consultation; local governments.

* * * * *

(d) *Environment.* To facilitate compliance with environmental review requirements, the jurisdiction should consult with non-profit and for-profit organizations and public housing agencies that receive HUD grant awards. The jurisdiction is authorized to perform the environmental review as the responsible entity for HUD programs that are subject to 24 CFR part 58. Where the jurisdiction requires reimbursement of costs, remuneration for environmental review services rendered by the jurisdiction may be available from the recipient's HUD program grant in accordance with 24 CFR 58.23.

Dated: August 9, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E7-17818 Filed 9-11-07; 8:45 am]

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Federal Register

**Wednesday,
September 12, 2007**

Part IV

The President

**Memorandum of September 8, 2007—
Assignment of Reporting Functions
Relating to the Information Sharing
Environment**

Presidential Documents

Title 3—**Memorandum of September 8, 2007****The President****Assignment of Reporting Functions Relating to the Information Sharing Environment**

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Energy[,] the Secretary of Homeland Security[, and] the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the reporting functions of the President under subsections (h) and (j) of section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53) (IRTPA), are hereby assigned to the Director of National Intelligence (Director). The Director shall consult the Secretaries of State, Defense, Energy, Homeland Security, and the Attorney General in performing such functions.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Director information that the Director requests to perform such functions, in the format and on the schedule specified by the Director.

The Director shall perform such functions in a manner consistent with the President's constitutional authority to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, and the performance of the Executive's constitutional duties.

Any reference in this memorandum to the provision of IRTPA shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

The Director is authorized and directed to publish this memorandum in the **Federal Register**.

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, sweeping initial "G".

THE WHITE HOUSE,
Washington, September 8, 2007.

[FR Doc. 07-4549
Filed 9-11-07; 8:52 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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 "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 2863/P.L. 110-75

To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110-76

To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110-77

To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110-78

To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United

States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110-79

Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110-80

To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

Last List August 13, 2007

CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110-65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the "Willye B. White Post Office Building". (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110-67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the "Staff Sergeant Omer T. 'O.T.' Hawkins Post Office". (Aug. 9, 2007; 121 Stat. 570)

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