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Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–30 of August 31, 2007

Presidential Determination on Waiving Prohibition on United States Military Assistance With Respect to Montenegro

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002, as amended (the ''Act''), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

• Determine that Montenegro has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such country; and

• Waive the prohibition of section 2007(a) of the Act with respect to this country for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, August 31, 2007.

[FR Doc. 07–4616
Filed 9–14–07; 8:45 am]
Billing code 4710–10

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–31 of September 8, 2007

Emergency Fund Drawdown to Support Assistance to Conflict Victims in Iraq, Lebanon, and Sri Lanka

Memorandum for the Secretary of State

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

(1) I hereby determine, pursuant to section 2(c)(1) of the Act, that it is important to the national interest to furnish assistance under the Act, in an amount not to exceed $24 million from the United States Emergency Refugee and Migration Assistance Fund, for the purpose of meeting unexpected and urgent refugee and migration needs, including contributions to international, governmental, and nongovernmental organizations, and payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State, related to: humanitarian needs resulting from conflicts in Iraq, Lebanon, and Sri Lanka.

(2) I hereby assign to you the functions of the President in relation to this memorandum under section 2(d) of the Act, and of establishing terms and conditions under section 2(c)(1) of the Act, and you my further assign such functions to any of your subordinates.

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

THE WHITE HOUSE,
Washington, September 8, 2007.

[FR Doc. 07–4617
Filed 9–14–07; 8:45 am]
Billing code 4710–10

Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

RIN 3206–AK89

Pay Administration Under the Fair Labor Standards Act

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to amend the pay administration regulations issued under the Fair Labor Standards Act of 1938. These regulations apply to all employees in agencies who are under OPM's jurisdiction for FLSA purposes.

DATES: The regulations are effective October 17, 2007.

FOR FURTHER INFORMATION CONTACT: Georgeanna Emery by e-mail at *fedclass@opm.gov,* by telephone at 202–606–3600, or by fax at 202–606–4891.

SUPPLEMENTARY INFORMATION: On May 26, 2006, the Office of Personnel Management (OPM) published proposed regulations (71 FR 30301) to amend 5 CFR, part 551, subparts A, B, F and G. The changes were proposed to update and harmonize OPM's regulations with the Department of Labor's (DoL) regulations issued under the Fair Labor Standards Act of 1938 (referred to as ''FLSA'' or ''the Act''). In addition, we provided in the proposed regulations a clearer understanding of coverage for executive, administrative, and professional employees by adding definitions and examples.

The 60-day comment period for the proposed regulations ended on July 25, 2006. During the period, OPM received comments from 11 Federal agencies, five labor organizations, and two individuals.

A number of the comments support OPM's adherence to and adoption of DoL's language in our regulations and the increased ease of applying the FLSA to Federal employees. Commenters noted that the added explanatory materials improved clarity and reduced the potential for erroneous FLSA exemption determinations.

Respondents also identified areas of concern and provided specific recommendations to improve the proposed revisions. We addressed those comments and recommendations beginning with general and/or global comments, followed by a section-by-section discussion. We also made minor editorial corrections which do not affect the content of the regulations.

General Comments

One agency suggested we include a discussion in the preamble regarding OPM's expectations with regard to how the new regulations will impact coverage determinations properly made under the previous regulations.

As indicated in the proposed regulations, with the exception of the adoption of the revised criteria in the salary basis test, these changes update and clarify but do not fundamentally change the regulations in place as applied consistently with controlling case law. Therefore, we do not anticipate changes in the exemption status of the vast majority of Federal employees to whom the current regulations were properly applied.

The proposed regulations eliminated the 80 percent test as a basis for FLSA coverage. One labor organization commented that the 80 percent test should remain in the regulations as it permits all employees who perform significant amounts of non-exempt work to benefit from FLSA protection. An agency noted that a court or arbitrator often focuses on the amount of time an employee spends on exempt and closely related duties in determining if an employee is covered by FLSA regulations. That agency suggested we include a discussion highlighting the elimination of the 80 percent test requirement and emphasizing the potential importance of the amount of time an employee spends performing exempt functions to support an agency's exemption determination.

Controlling case law has made retention of the 80 percent requirement unsupportable. Federal courts have found many employees to be exempt who spent less than 50 percent of their time performing exempt work. *See, e.g., Jones* v. *Virginia Oil Co.,* 69 Fed. Appx. 633 (4th Cir. 2003) (management was found to be the ''primary duty'' of an employee who spent 75 to 80 percent of her time on basic line-worker tasks); *Murray* v. *Stuckey's, Inc.,* 939 F.2d 614 (8th Cir. 1991) (manager met the ''primary duty'' test despite spending 65 to 90 percent of his time in non-management duties); *Glefke* v. *K.F.C. Take Home Food Co.,* 1993 WL 521993 (E.D. Mich. 1993) (employee found exempt despite assertion that she spent less than 20 percent of time on managerial duties because ''the percentage of time is not determinative of the primary duty question, rather, it is the collective weight of the four factors''); and *Stein* v. *J.C. Penney Co.,* 557 F. Supp. 398 (W.D. Tenn. 1983) (employee spending 70 to 80 percent of his time on non-managerial work held exempt because the ''overall nature of the job'' is determinative, not ''the precise percentage of time involved in a particular type of work''). *See also, Horne* v. *Crown Central Petroleum, Inc.,* 775 F.Supp. 189 (D.S.C. 1991); *Donovan* v. *Burger King,* 672 F.2d 221 (1st Cir. 1982); *Donovan* v. *Burger King,* 675 F.2d 516 (2nd Cir. 1982).

One agency asked that we include a discussion regarding the appropriateness of reviewing the classification of a position in terms of title, series, and grade, if an FLSA review by a third party reveals new information that contradicts the current classification. While a third party review of an FLSA coverage determination may reveal questions regarding the classification of the employee's work, it is inappropriate to apply 5 U.S.C. chapters 51 and 53 requirements to the regulatory process for implementing 5 CFR part 551 for employees under OPM's FLSA jurisdiction, as these statutory requirements have no bearing on FLSA exemption determinations.

One agency recommended we revise the work aid, ''How to make exemption status determinations under the Fair Labor Standards Act (FLSA)'' to reflect changes made to the regulations. The work aid, now titled ''Making an FLSA Exemption Status Determination—A Work Aid'' is found on our Web site at *http://www.opm.gov/flsa* and will be updated once the final rule is issued.

One agency expressed concern that we italicized a term not defined in the regulations. In this final rule, all terms listed in the Definitions section at § 551.104 are italicized in the regulations.

Subpart A—General Provisions

Section 551.101—General

One labor organization suggested that DoL's regulations appear to violate the letter or spirit of the FLSA, and while OPM's interpretation of the FLSA must be generally consistent with DoL's interpretation, OPM need not mirror DoL where doing so would violate the FLSA. We note that the commenter's concern is addressed in § 551.101(c). We also note that DoL's changes have gone through the Administrative Procedure Act (APA) review and comment process and now have the force of law. To the extent that OPM's regulations are consistent with DoL's regulations, OPM does not violate the FLSA; hence, the labor organization's comment is misplaced. We have provided examples to the extent we believe necessary to properly apply the regulations.

One agency recommended we add an explanation that the law does not require OPM's regulations to comply verbatim with DoL's administration of the Act. The agency maintains that doing so will alert Code of Federal Regulations users that while administration of the Act by OPM and DOL is similar in some aspects, marked differences remain. We believe the first sentence in § 551.101(c) addresses the agency's concern regarding marked differences: ''OPM's administration of the Act must comply with the terms of the Act but the law does not require OPM's regulations to be identical to the Department of Labor's FLSA regulations.''

One labor organization commented that this section fails to state why and when OPM regulations may diverge from DoL regulations, and that it also fails to clarify that OPM regulations cannot apply FLSA exemptions more broadly than DoL regulations. Citing a Court of Appeals ruling that OPM regulations could not make it more difficult for Federal employees to qualify for overtime than DoL regulations (*AFGE* v. *OPM,* 821 F.2d 761, 771 (D.C. Cir. 1987)), the commenter expressed the concern that OPM regulations can and should be more specific than DoL regulations in narrowly defining exemptions. We refer the commenter to *Billings* v. *U.S.,* 322 F.3d 1328 (Fed. Cir. 2003), which places the labor organization's concern in the appropriate context. As stated in *Billings,* ''*AFGE* stands for the unremarkable proposition that, under the same facts, an employee in federal employment should receive the same overtime compensation as an employee in the private sector. In this case, however, the appellants are not employed under the same facts applicable to the private sector. Appellants as federal employees, are subject to Title 5 suspensions not present in the private sector.'' We also note that the Court of Federal Claims in *Adams* v. *U.S.,* 40 Fed. Cl. 303 (1998) found OPM's regulation to be valid despite the fact it did not contain a salary-basis test and, therefore, was inconsistent with DoL regulations. Rather, the court held that OPM's regulation was a reasonable interpretation of the FLSA within the Federal sector.

Section 551.104—Definitions

We received a number of comments regarding the proposed changes we made to this section. Some respondents had concerns with particular definitions, while others commented on our decision to move terms from this section and place them where the concept is addressed in the regulation.

One agency recommended that in the definitions section, we earmark those definitions that have been removed and addressed as concepts in other sections of the provisions. Like DoL, we have moved these terms and concepts in order to streamline, update, and clarify these complex regulations, as well as reduce unnecessary duplication and redundancies. We provided such information in the proposed rules to alert current users to the change. Therefore, we decline to adopt the recommendation to cross-reference the location of terms in these final regulations.

In addition to the general concerns listed above, we received specific questions relating to the following definitions:

Customarily and Regularly

One agency suggested we clarify the definition to make clear that tasks occurring on a regular and recurring basis, even if they do not occur every workweek, meet the definition of the term *customarily and regularly.* We did not adopt this suggestion because we do not believe it adds to the understanding of the term.

One labor organization expressed the concern that changes in the definition weaken the protections of the FLSA by expanding the executive exemption criteria at § 551.205. They maintain that removing the phrase ''day-to-day'' from the definition permits employees who only occasionally exercise executive discretion to meet the exemption criteria. These regulations expressly prohibit the interpretation put forward by the labor organization since the definition states that the ''frequency must be greater than occasional'' and '' * * * includes work normally and recurrently performed every workweek.'' We do not believe exemption criteria for executives will be expanded and decline to change the definition as requested.

Discretion and Independent Judgment

One agency was concerned that we removed the definition of this term when, in fact, we did not. Due to the extensive discussion regarding the administrative exemption, we placed the term with the administrative exemption criteria at § 551.206. We have included the term in alphabetical order in the definition section at § 551.104 with a cross reference to § 551.206.

Educational Establishment

One agency suggested we provide additional information regarding when a training facility will qualify as an *Educational establishment.* Training facilities vary widely within the Federal sector and are found in a number of different settings. These settings range from Department of Defense-operated primary and secondary schools and military technical training schools, to law enforcement training centers and adult training facilities operated by a variety of Federal agencies. Because of this wide variability in facilities, we do not believe further detailed discussion will add materially to a better understanding of the term.

Exempt Area

In accordance with information obtained from the Department of the Interior's Office of Insular Affairs, we have added the Commonwealth of the Northern Mariana Islands, a territory under the jurisdiction of the United States, to the list of exclusions from the definition of exempt areas.

FLSA Nonexempt

One agency commented that the terminology related to who is and who is not covered by the FLSA is confusing. The agency explained that if the term ''FLSA exempt'' means not covered by the provisions of the Act, then the term ''FLSA nonexempt'' means FLSA ''not-not covered.'' The agency recommended we replace the term ''FLSA nonexempt'' and insert a new term ''FLSA covered.'' The commenter noted that exempt employees are exempt from the

overtime and minimum wage provisions of the Act. We note that exempt employees are covered by other provisions of the Act. We decline to adopt this recommendation since the proposed terminology is inconsistent with that used by the Department of Labor.

Formulate, Affect, Interpret, or Implement Management Policies or Operating Practices

One labor organization commented that our definition with respect to performing work involving management policies or operating procedures in relation to broad national goals expressed in statutes or Executive orders is ''overboard,'' as virtually all Government employees endeavor to comply with broad national goals set by statute or Executive order. Consequently, the labor organization recommended we revise the definition to clarify that administrative work involves compliance only with management's operational policies. We agree with the labor organization's concern that administrative work involves compliance only with management's operational policies rather than compliance with substantive statutes; however, this issue is already addressed in § 551.206(b)(1) which directs the user to consider if an employee ''has authority to formulate, affect, interpret, or implement management policies or operating practices.'' Therefore, we decline to revise this definition.

Two labor organizations stated that adding the words ''interpret,'' ''implement,'' and ''operating practices,'' to the definition broadens the coverage of the term to be inconsistent with the Act. This definition is consistent with the current DoL definition and does not change the underlying meaning of the regulation; therefore, we decline to revise this definition.

Management

One labor organization suggested changes in the definition are problematic because the proposed definition eliminates the distinction between production and support services. We address this distinction in § 551.206, and we consider its placement there more appropriate than in the definition of *management.*

One labor organization suggested we amend the definition to clarify a team leader does not become exempt merely by apportioning work among the team members. They recommended we expressly state what the administrative provision indirectly says in describing which leaders qualify for exemption. The labor organization asserts that, just as in the private sector (*see* 29 CFR 541.203(c)), team leaders are exempt administrators only if they perform such administration functions as ''acquisitions, negotiating real estate transactions or collective bargaining agreements, designing and implementing productivity improvements'' or similar work as specified in § 551.206(i). While we understand the labor organization's concern regarding the misreading of apportioning work, we must rely on the reader to understand that selected phrases of a definition must be read within the context of the entirety of the regulations, and the full intent of the definition must be applied. Therefore, we do not find the proposed expanded discussion to be necessary. Further, we do not agree with the commenter's characterization of § 551.206(i). Team leaders who lead major projects and who function as an extension of management for matters of significance to the employer are likely to meet the administrative exemption. Section 551.206(i) must be read in conjunction with § 551.206(b)(2) (i.e., an employee may carry out major assignments in conducting the operations of the organization), which does not limit exemption to leading staff functions.

Nonexempt Area

In accordance with information obtained from the Department of the Interior's Office of Insular Affairs, we have added the Commonwealth of the Northern Mariana Islands, a territory under the jurisdiction of the United States, to the list of nonexempt areas.

Primary Duty

One agency recommended we add to this definition the requirement that a duty must occupy at least 25 percent of the employee's time. This definition, for the most part, is carried over from our previous regulation with specific requirements to ensure that users do not focus on a very small percentage of time when it would be highly unlikely that the duty would support the basis for primary duty. The definition is consistent with the discussion of the 80 percent test in the General Comments section of this preamble. Therefore, we decline to adopt this recommendation.

Recognized Organization Unit

One labor organization viewed the definition of *recognized organizational unit* as problematic because it suggests even a team leader with little actual supervisory function can be considered the lead of a recognized organizational unit. The labor organization maintained the definition should clearly state that a *recognized organizational unit* does not consist of temporary units whose composition or purpose is constantly in flux. We believe the definition fully addresses these concerns. Again, we must rely on the user to understand that *recognized organizational unit* must be read in conjunction with the other criteria under the executive exemption at § 551.205 (i.e., a leader will not meet the executive exemption if that employee does not exercise the full range of management and work control responsibilities required to meet the requirements of this section).

Trainee

One agency recommended we further clarify the definition by supplementing it with additional work examples and illustrations. The agency believes the revised definition of ''trainee'' at paragraphs (1) through (5) implies application to certain employment categories/classifications operative in Federal service. We believe the definition makes clear that a student officially appointed to a Government position is not a trainee for purposes of the FLSA. The definition of *trainee* for purposes of the FLSA is materially different from the meaning of ''trainee'' for many purposes of title 5, U.S.C., and similar human resources statutes.

Worktime

One labor organization suggested that, assuming removal of the 80/20 test is warranted, OPM should delete as superfluous the § 551.104 definitions relating to ''worktime.'' They also suggested we remove the word ''worktime'' from § 551.101(a), as that paragraph contains no substantive content, but merely refers to the FLSA's delineation of ''administrative procedures by which covered worktime must be compensated.'' The labor organization maintains that OPM should replace the word ''worktime'' with the statutory phrase to refer to FLSA delineation of procedures for compensating ''hours of work.'' The labor organization is of the opinion that such a change would harmonize with DoL's regulations. We made no substantive change in the definition of *worktime* itself because these regulations are intended to address FLSA coverage issues and not hours of work. Definitions relating to *worktime* are not used in defining *hours of work* but are used solely in determining FLSA exemption status; therefore, we decline to make this change.

Subpart B—Exemptions and Exclusions

We received several requests to move the sections on specific professional exemptions from the end of subpart B and place them directly following the professional exemption criteria in this section. Based on these comments, we have reordered the sections, and in this final rule, those sections formerly numbered §§ 551.214 through 551.216 in the proposed rule, containing information relating to specific professional exemptions, have been placed directly behind § 551.207 Professional exemption criteria and renumbered as §§ 551.208 through 551.210. The remaining sections have been renumbered accordingly.

Section 551.201—Agency Authority

One labor organization suggested this section (as well as § 551.202) would be strengthened if it emphasized reasonable doubt regarding exemption status should be resolved in favor of nonexemption. This concern is addressed by § 551.202(d) which states, ''If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee will be designated FLSA nonexempt.''

Section 551.202—General Principles

We received several comments regarding revised paragraph (e), which clarifies that the designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee. The occupational or organizational title alone is not sufficient for an FLSA exemption status determination.

Three agencies commented on the requirement that the designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee. We fully agree that the coverage determination must be based on the actual work performed by the employee. The protective nature and purpose of the FLSA requires agencies to assure such accuracy on a continuing basis. The same responsibility holds true for existing and newly established positions. While we appreciate the recommendations received to clarify this section, we have concluded that our statement at § 551.202(e) will make the requirements clear to those who apply these regulations; we do not believe any additional guidance is required.

One agency disagreed with our statement at § 551.202(e) that ''established position descriptions and titles may assist in making initial FLSA exemption determinations'' and saw no need for further review if a position description accurately describes the duties performed by the employee. Additionally, the agency questioned how exemption status is determined for newly established unencumbered positions and questioned whether proposed duties should be used to make an FLSA coverage determination. Finally, the agency recommended adding to the end of this section, ''on a regular and recurring basis over a period of more than 30 consecutive calendar days.'' We understand the commenter's concern about making an FLSA coverage determination on newly established positions. In such cases, the determination must be based on the description of work because no employee is actually performing the work. However, once an employee is placed in the position, the agency is responsible for ensuring that the FLSA designation is accurate and remains accurate, based upon the actual work performed by that employee. Thus, we decline to insert the proposed phrase.

One agency found the second sentence of § 551.202(f) difficult to understand. We did not propose changes to this section. The purpose of this section is to recognize that employees may perform a combination of exempt duties and may qualify for exemption. While one of the exemption criteria may not be met in its entirety, the work may meet another which serves as the basis for the exemption determination. To respond to the request for clarification and to further harmonize with DoL's regulations at 29 CFR 541.708, we have amended § 551.202(f) to explain that an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption; i.e., work that is exempt under one section of this part will not defeat the exemption under any other section.

One labor organization had concerns with the first sentence of § 551.202(h) in the proposed rule which read: ''Although it is normally feasible and more convenient to identify the exemption category, this is not essential.'' They stated that while an employee's primary duty may involve two categories which are intermingled and difficult to segregate, an employer always bears the burden of establishing the basis for an exempt classification. The labor organization maintained that OPM should adhere to the principle that employers must identify any and all exemption categories used to exempt a particular job. We did not propose a change to this section. The first sentence of § 551.202(h) accurately covers, for example, the professional employee who may also meet the executive exemption. In this case it would not be necessary to identify which one of the two served as the specific basis for the exemption determination because both exemptions would apply. However, to clarify this concept, we have revised the first sentence to read, ''Although it is normally feasible and more convenient to identify a single exemption category, this is not always appropriate.'' We have also added a sentence at the end of § 551.202(h) to require that, ''The agency is responsible for showing and documenting that the work as a whole clearly meets one or more of the exemption criteria.''

Section 551.203—Salary-Based Nonexemption

A number of commenters opposed our adoption of DoL's $23,660 minimum salary level test as a nonexemption threshold. One labor organization requested we provide a reasoned explanation for the change in our position after previously rejecting a salary test as ill-suited for use with the Government's classification system. This labor organization, along with another labor organization, stated that OPM is not bound by law to adopt DoL's approach to this issue, since Federal salaries are not impacted by the large retail sector that DoL must consider in making rules, and therefore, few Federal employees would benefit from this salary level test. OPM regulations governing the Federal sector must be as consistent as practicable with DoL's regulations governing the private sector.

Many positions previously covered by the unitary general schedule (GS) system are now covered by alternative pay systems. The GS system to which our previous regulations were linked no longer covers large numbers of Federal employees under OPM's FLSA jurisdiction. Further, it is contemplated that additional groups of Federal employees may be removed from coverage under the GS system in the future. Therefore, direct linkage to GS grade levels is of diminishing utility to the FLSA exemption determination process. Furthermore, concerns that lower graded nonsupervisory employees who meet the minimum salary level threshold will become exempt are misplaced. As noted in § 551.204(a), nonsupervisory clerical and lower-graded technical employees will remain nonexempt because they will not meet any of the exemption criteria.

When the FLSA was extended to the Federal sector in 1974, GS–5 and GS–6 supervisory positions exceeded the minimum salary level test. In December

1997, OPM issued subsequent regulations (*see* 62 FR 67238, December 23, 1997). At that time, all supervisory GS–5 and GS–6 positions still received annual salaries substantially higher than the minimum salary level test. These positions, and prevailing rate first-level supervisory positions, were also affected by the 80 percent test. These conditions made use of the minimum salary level test in 1974 and 1997 moot.

As discussed in the General Comments section of this preamble, we are no longer using the 80 percent test based on controlling case law. Also, DoL raised the minimum salary test to the point where some nonappropriated fund instrumentality positions might meet the executive exemption test, but would fail to meet the minimum salary threshold of $23,660. In adopting the minimum salary test, these lower-salaried employees will continue to have their nonexempt status protected, thereby assuring a result consistent with DoL's regulations. The fact that a small number of positions are affected does not diminish our responsibility to ensure these employees receive any and all protections afforded by the Act and its implementing regulations. Nevertheless, we view this minimum salary threshold as transitory and believe it will likely become obsolete given the small number of employees potentially affected at the present time, and the likely continued rise in Federal salary rates.

One labor organization expressed concern regarding OPM's use of the annual figure that DoL adopted for the private sector without reference to salary data from the Federal sector. One agency suggested that rather than show a specific rate of basic pay due to changes in cost of living and impacts of inflation, we should refer users to a Web site for current thresholds. OPM regulations governing the Federal sector must be as consistent as practicable with DoL's regulations governing the private sector. Therefore, we decline to make any changes.

One agency suggested OPM use the term ''total adjusted salary'' or ''adjusted basic pay'' in place of ''rate of basic pay'' to clarify the rate of pay being used for comparison purposes. We have not adopted the suggested terms and will continue to use ''rate of basic pay'' which is defined in § 551.203(b) to include locality pay and certain similar supplements.

The same agency also recommended we provide an explanation at § 551.203(a)(3) as to why only a '' * * * professional in the practice of law or medicine as prescribed in paragraphs (c) and (d) of § 551.208,'' is not covered by the salary-based nonexemption. We changed the language to be consistent with DoL's longstanding exclusion from the salary test of employees who hold a valid license or certificate permitting the practice of law or medicine, or any of their branches, and who are actually engaged in the practice thereof. This exclusion also applies to employees who hold the requisite degree for the general practice of medicine and who are engaged in an internship or residency program pursuant to the practice of a profession. See 29 CFR 541.600. We also note that such positions in the Federal Government receive compensation well in excess of the minimum salary level test.

Section 551.204—Nonexemption of Certain Employees

One labor organization suggested we remove the first word ''certain'' in § 551.204(a), as it is unnecessary and confuses the meaning of the section. We disagree. Removal of the word ''certain'' from this section would overly broaden the category of nonexempt nonsupervisory white-collar employees. For this reason, we have not adopted the suggestion.

One labor organization commented that the removal from the regulations of the statement that, ''A supervisory employee in the Federal Wage System or in other comparable wage systems is exempt only if the employee is an executive employee....,'' expands the exemption, may even implicitly suggest that all supervisory employees should be exempt, and is contrary to the FLSA. The labor organization contends these regulations should include a passage regarding the nonexemption of FWS supervisory employees. We find that the inclusion of the suggested language would be superfluous. As stated in § 551.202(a), an employee is presumed to be FLSA nonexempt unless the employing agency correctly determines that the employee clearly meets one or more of the exemption criteria. Therefore, agencies are obligated to fully apply the executive exemption criteria to all supervisory positions to determine if they are exempt.

One agency suggested we amend § 551.204(a)(2) to include language to address pay banding systems. The agency recommended we add a particular pay band level that, in their agency, is equivalent to the GS–9 level. This assumes most agencies will band grades in the same manner as the commenting agency. As agencies generally establish their own pay banding schemes, our regulations permit each agency to determine which of its bands is equivalent to a particular level. For this reason, we have not adopted the suggestion.

Section 551.205—Executive Exemption Criteria

One agency noted that there is no mention of work-planning and assignment responsibilities, and only a small number of personnel authorities are mentioned. The agency suggested that in the final regulations, we provide language to: (1) Clarify the importance of work-planning and assignment responsibilities in meeting the exemption criteria; and (2) clarify whether the few personnel activities mentioned in § 551.205 are more critical to meeting the exemption criteria than are the others mentioned in the definition of the term ''management'' in § 551.104. The commenter noted that a floor is established by the specifics in § 551.205(a)(2). We note this floor is expansive and links back directly to the term ''management'' as noted in § 551.205(a) and defined in § 551.104, and is not limited to hiring, firing, advancement, and promotion, but also pertains to any other change of employee status. Therefore, while some employees covered by the executive exemption may not perform each and every activity listed under ''management,'' there is an expectation that they will perform the functions listed under § 551.205(a)(2). We decline to make the suggested change.

One labor organization voiced concern that we removed the requirement for executives to regularly exercise discretion and independent judgment, or spend 80 percent of their time on ''supervisory and closely related work.'' The labor organization requested we clarify that executives necessarily exercise the type of ''discretion and independent judgment'' that the role explicitly requires. As recognized by the labor organization in their comments, we have included in the definition of *primary duty* the requirement to exercise discretion and independent judgment, and the definition of *management* illustrates how this judgment is applied. This issue is adequately addressed in § 551.104 of this regulation; therefore, we have not made the requested change.

One agency commented that in § 551.205(a)(1), there may be situations where a supervisor, as a regular and recurring part of his or her job, may supervise only one employee. They further commented that the General Schedule Supervisory Guide (GSSG) does not require a minimum number of subordinates for a position to be classified as supervisory. As noted previously in this preamble, the

definition of ''supervisor'' for purposes of chapters 51 and 53 of title 5, U.S. Code, is separate and distinct from the definition for purposes of applying the FLSA.

One labor organization stated that the ''scope of direction'' element in § 551.205(a)(1) is too wide, and further commented that permitting exemption for employees who direct a mere two other persons far exceeds the purpose of the executive exemption. The labor organization contended that the proposed regulations more closely describe a group leader or working supervisor rather than an executive, and that a true executive position is one with a broader scope of control covering at least five full-time employees. We must reject the labor organization's request to increase the number of employees directed, given that this language is substantively the same as the existing regulations and consistent with DoL's regulatory language.

Regarding the term ''particular weight'' in § 551.205(b), one agency indicated it has a number of locations where supervisors direct the work of different groups of employees each day, because operations not only occur 24 hours per day, but also in several different stations within one location. Additionally, performance ratings may be created by a group of supervisors who together may have supervised each of the rated employees, but who may have not supervised the same group of employees on each workday and shift worked. The agency requested additional information regarding the impact on whether or not an employee can be an exempt executive if she or he supervises a variety of individuals over the course of the workweek and recommends personnel actions on the basis of consulting with other supervisors, all of whom also supervise the same group of employees on different days or shifts. We believe this issue is adequately addressed in § 551.104 under the term ''recognized organizational unit'' in paragraph (3). In addition, the general human resources practice of designating an official supervisor of record, with specific delegations of responsibility, facilitates the application of these FLSA requirements.

Section 551.206—Administrative Exemption Criteria

We received a number of questions and concerns from agencies and labor organizations regarding the interpretation and application of the administrative exemption criteria. Changes were made to this section largely to harmonize with DoL changes in the description of administrative work and to add examples of specific types of work performed in the Federal Government.

One labor organization requested we insert the express comparison between staff service or support work as distinguished from production or line work. The labor organization maintains that we could avoid any confusion by reinserting language from the definition of *Management or general business functions or supporting service* in the prior regulations. We do not agree with the labor organization's recommendation to reinsert language from the definition in the prior regulations. However, to further clarify the distinction between staff and line work, we revised § 551.206 by inserting '', as distinguished from production functions,'' after the word ''operations'' in the first sentence.

One agency suggested we add language to define the minimum level of immediate guidelines and supervision needed to constitute discretion and independent judgment. We believe the examples in § 551.206(b) provide adequate context for applying the concept of discretion and independent judgment.

Two labor organizations had concerns with the concept of employees having the authority to formulate, affect, interpret, or implement management policies or operating practices. One of the labor organizations expressed concern that the application of § 551.206(b)(1) will exempt employees who should not be exempt, contending that many nonsupervisory white-collar employees perform work that requires them to implement or interpret management policies and operating practices with respect to mission-critical activities, yet their work is indisputably of a routine nature. One labor organization viewed the definition as being overly expansive. We believe the factors provided in § 551.206(b) provide adequate context for applying the concept of discretion and independent judgment. In addition, § 551.206(e) makes clear that work of a routine nature will not meet the administrative exemption. The terminology we adopted is consistent with DoL's regulations (*see* 29 CFR 541.202(b)). We believe that when read and applied in the context of the regulations as a whole, the language is not overly broad. Therefore, we decline to modify our language.

One agency suggested we provide an example of an exempt Federal administrative employee who would be involved in performing exempt administrative work for the employing agency's customers. We believe that § 551.206(h) already provides an adequate description of this type of exempt work. Therefore, we decline to accept this suggestion.

Two agencies suggested we clarify what constitutes ''matters of significance'' by adding language to clarify the scope and effect of the work and adding a definition of the term. We believe we have explained the intent of the Act by the examples provided throughout § 551.206. In this regard, we have aligned with DoL's approach by describing relevant factors to consider in making the appropriate exemption determination.

One labor organization asserted that in trying to address duties performed by employees who support workers on the production side in § 551.206(h), we omitted the requisite language distinguishing administrative staff who provide operational support from nonexempt employees working on the production end. They contend that, as proposed, the paragraph creates confusion by referring to employees who support line managers without offering examples of nonexempt line or production duties. We agree with the comment and have added clarification at the end of § 551.206(h) by inserting examples of investigative work that may either be exempt or nonexempt depending on whether it is performed as a line or staff function.

One labor organization expressed concern that the proposed regulations at § 551.206(h) may weaken the line versus staff dichotomy and by doing so, may upset decades of court precedent regarding this feature of the administrative exemption. We do not agree with the labor organization's concern, as our illustrations are consistent with case law. We reference *Piscione* v. *Ernst & Young*, 171 F.3d 527 (7th Cir. 1999) for discussion of when advisory and program development work that affects management policy and internal operations of client organizations is administratively exempt.

One agency commented that § 551.206 should provide information regarding OPM's expectations about the coverage or exemption of those performing a supporting service under the revised regulations. The concept of administratively exempt work can be found at § 551.206(h).

Several commenters remarked that the guidance provided on team leaders in § 551.206(i) is unclear. One agency commented that where project examples are provided, the decision as to whether or not the team leader was exempt seemed to be based on the types of projects led, thereby necessitating a

decision on the relative worth of the projects, rather than on the team leader's responsibilities. One labor organization expressed concern that the examples provided are not found in DoL's regulations on team leaders, thereby making it difficult to ascertain precisely how or when these activities could be considered major projects. The labor organization suggested that, to avoid imposing an overly broad definition of ''team leader,'' these examples should be removed or the provision should make clear that reviews or investigations do not constitute examples of major projects unless they involve the exercise of discretion and independent judgment. Another labor organization shared the concern that § 551.206(i) could drastically broaden the executive exemption, in that paragraph (i) appears to describe a working supervisor more closely than an administrator. The labor organization suggested removal of this paragraph from the regulations. To clarify the intent of § 551.206(i), we have added an example of a lead auditor who would meet the administrative exemption.

One labor organization commented that the definition of management/program analysts in § 551.206(l) seems to suggest that any employee who engages in the study of the operations of an organization or a program has a primary duty that is directly related to the management or general business operations of the employer. They suggest that OPM clarify that an employee must have as his or her primary duty the study of such operations, as well as the recommending of changes to operations. They further suggest OPM clarify that employees in this position do not necessarily meet the requirement that they exercise discretion and independent judgment on matters of significance. We do not believe these revisions are necessary, as § 551.206 makes clear what should be considered in determining an employee's primary duty. In addition, § 551.206(l) is to be applied within the entirety of the administrative exemption criteria, which are applicable only when the employee's work entails the exercise of discretion and independent judgment on matters of significance.

One agency recommended that OPM clarify what constitutes ordinary inspection work at § 551.206(n) and explain what the statement, ''They have some leeway in the performance of their work but only within closely prescribed limits'' means. We decline to add language, as we believe § 551.206(n) is sufficiently clear as written.

Section 551.208—Learned Professionals

As stated earlier in this preamble, we reordered subpart B of the final regulations. Consequently, § 551.208 in the final regulations corresponds to § 551.214 in the proposed regulations.

One labor organization expressed numerous concerns regarding our treatment of learned professionals. They suggest that the proposed regulations neglect to emphasize that, with rare exceptions, learned professionals must have advanced degrees to succeed in their field. This labor organization maintained that in explaining the impact of the word ''customarily,'' the proposed regulations permit exemption of individuals who perform substantially the same work as degreed employees, without making clear how rarely employees attain such positions without advanced degrees. These proposed regulations are consistent with existing 5 CFR 551.207(a)(1). The work requires the application of knowledge customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree. However, in an effort to address the labor organization's concerns, we have modified the language at § 551.208(a)(3) to emphasize the infrequency of employees attaining professional positions without advanced degrees.

The same labor organization expressed concern regarding § 551.208(b), maintaining it provides management with the ability to seek new learned professions whenever a school creates a new advanced degree. They requested this section be removed. Discussion of the expansion of professions in § 551.208(b) is consistent with 29 CFR 541.301(f); therefore, we decline to eliminate the section.

This labor organization also commented that the description of the accounting profession provided at § 551.208(e) is ambiguous and uses equivocating language. Our description is consistent with 29 CFR 541.301(e)(5); therefore, we decline to change the regulations.

One agency and two labor organizations raised concerns regarding misapplication of the engineering profession at § 551.208(f). One labor organization stated that the portion of § 551.208(f) concerning engineering technicians should be entirely removed. We have revised the language to clarify that engineering technicians infrequently perform exempt work.

One individual commented that, in the private sector, registered nurses paid on an hourly basis are nonexempt and therefore entitled to overtime pay under FLSA. The commenter suggests if OPM considers registered nurses exempt based on meeting the duties requirement without considering the salary test, then Federal Registered nurses are at a disadvantage. In this regard, the individual objected to § 551.208(j) which reads, ''Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption.'' We believe these concerns are misplaced. Section 551.208(j) must be read in conjunction with the salary-based nonexemption at § 551.203. Registered nurses paid on an hourly basis will not meet the annual pay basis requirements of § 551.203(a) because the exemption only applies to employees paid on an annual pay basis. Therefore, such employees will be nonexempt.

Section 551.210—Computer Employees

As stated earlier in this preamble, we reordered subpart B of the final regulations. Accordingly, § 551.210 in the final regulations corresponds to § 551.216 in the proposed regulations.

One agency recommended renaming this section ''Information Technology employees'' to remain consistent with how Federal classification standards refer to these positions. Section 13(a)(17) of the Act specifically addresses computer occupations, as do DoL's implementing regulations in 29 CFR part 541, subpart E. As noted previously in this preamble, Federal position classification and job grading laws and regulations do not control FLSA definitions. Therefore, we decline to accept this recommendation.

One agency and one labor organization found the intermingling of the computer exemption under sections 13(a)(1) and 13(a)(17) of the Act confusing. We believe that § 551.210 is sufficiently clear as written. Further, our description is consistent with 29 CFR 541.400; therefore, we decline to change the regulations.

One labor organization raised concerns regarding proposed § 551.210(d), where we state that certain employees meeting exemption under section 13(a)(17) of the Act may also have executive and administrative duties which qualify the employees for exemption under executive and administrative exemption rules as well. The labor organization maintained that it is unclear how these same employees could also have executive or administrative work as their primary duty, unless their computer functions completely overlap with executive or administrative work. They further maintained that if such overlapping of

duties occurred, the executive and administrative rules would add nothing to the designation of these employees as FLSA exempt or nonexempt. As discussed in connection with § 551.202(h), agencies are responsible for showing and documenting that an employee's work as a whole clearly meets one or more of the exemption criteria. We decline to change this language.

Section 551.211—Effect of Performing Different Work or Duties for a Temporary Period of Time on FLSA Exemption Status

As stated earlier, we reordered subpart B of the final regulations. As a result, § 551.211 in the final regulations corresponds to § 551.208 in the proposed regulations. We also renamed the section to more appropriately reflect the intent of § 551.211.

Several labor organizations raised the same concerns regarding the 30-day test that OPM addressed in the General Comments section of the 1997 regulations (*see* 62 FR 67238). We responded to this issue at that time, and our response remains the same. The 30-day test is well-established and has been unchanged in OPM regulation since January 1988. At that time, OPM made clear the extent of an agency's responsibilities regarding an employee who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of his or her official position description.

Two agencies expressed concern with, and questioned the intent of, this section. One agency suggested that if a temporary assignment is expected to last beyond 30 days, the agency should, as good management practice, determine the exemption status of the employee at the beginning of the temporary assignment. This agency maintained that it is not practical or fair for an agency to pay an employee overtime under FLSA rules during the first 30 days of an assignment, while knowing that an exempt assignment will last beyond the 30 days, and then have to require the employee to repay the overtime. The other agency raised similar concerns. The intent of § 551.211(d) is to deal with situations where management is unclear regarding the duration of an assignment. We decline to amend this portion of the regulations.

Section 551.213—Exemption of Employees Receiving Availability Pay

As stated earlier in this preamble, we reordered subpart B of the final regulations. Consequently, § 551.213 in the final regulations corresponds to § 551.210 in the proposed regulations.

At the request of an agency, we have amended § 551.213(a) to include the statutory provision under which employees are exempted from FLSA coverage by receiving availability pay.

The same agency commented that we should include a note in § 551.213(b) that positions formerly classified as pilots at the U.S. Customs Service are now identified at the U.S. Customs and Border Protection (CBP) as CBP Air Interdiction Agents, GS 1881. As the statutory requirements of 5 U.S.C. chapter 51 are not controlling in applying the FLSA, we decline to amend the regulations to cite specific position titles. We have changed the agency name in the regulations from U.S. Customs Service to U.S. Customs and Border Protection.

Section 551.214—Statutory Exclusion

As stated earlier, we reordered subpart B of the final regulations. Accordingly, § 551.214 in the final regulations corresponds to § 551.211 in the proposed regulations.

One agency suggested that the regulations should cite the statutory and regulatory provisions regarding customs officers covered by 19 U.S.C. 267 rather than attempt to list all the covered titles. We agree and have amended the regulations to delete reference to specific titles.

Section 551.215—Fire Protection Activities and 7(k) Coverage for FLSA Pay and Exemption Determinations

As stated earlier, we reordered subpart B of the final regulations. Consequently, § 551.215 in the final regulations corresponds to § 551.212 in the proposed regulations.

We received numerous comments from a labor organization questioning and speculating on why we added this section. This labor organization expressed concern that the firefighter definition in 5 CFR 550.1302 will be altered by issuance of this regulation. They maintain the existing firefighter definition is adequate, and this rule may make interpretation of section 7(k) of the Act in the Federal sector more complex. In addition to this labor organization's comments, two agencies raised concerns regarding the effect of these regulations on wildland firefighters. These comments indicate that further clarification is required.

This section pertains to two distinct topics: fire protection activities and coverage under the section 7(k) provisions of the Act. The revised regulations continue OPM's longstanding policy that the section 7(k) provisions are not automatically applied to all employees who perform fire protection activities. OPM rules provide that the section 7(k) provisions are applied only to employees receiving certain types of premium pay associated with extended tours of duty. For example, section 7(k) is applicable to a fire protection employee only if he or she receives annual premium pay under 5 U.S.C. 5545(c) (usually standby duty pay under (c)(1)) or firefighter's compensation under 5 U.S.C. 5545b. These premium payments apply to firefighters who have extended tours, usually including 24-hour shifts.

Wildland firefighters are not covered by the regulatory provisions for section 7(k) employees at § 551.541. This matter was clarified in the regulations in 1976, and wildland firefighters who do not receive the specific types of premium payments under §§ 551.501(a)(1) and (5) will continue to be covered by section 7(a) of the Act under these regulations. We have modified §§ 551.215(a) and 551.541(a) in the final regulations to better align it with this section of the regulation.

One labor organization provided a number of comments in response to the establishment of this section. The labor organization commented that OPM's inclusion of fire inspections among the list of fire protection activities at § 551.215(b) is confusing, suggesting it may lead to the erroneous conclusion that employees who solely perform fire inspections are engaged in fire protection activities under section 7(k). We note that the proper interpretation of § 551.215(b) is predicated upon reading it within the entirety of § 551.215. The labor organization's concern is best addressed by reading § 551.215(b) in conjunction with § 551.215(d)(2). Nevertheless, to clarify this section, we have changed § 551.215(b) by adding ''by trained firefighters eligible for reassignment to fire control and suppression or prevention duties'' in the clause dealing with inspections.

The labor organization commented that OPM is obligated at § 551.215(b) to comply with DoL's interpretation of the application of section 7(k) to emergency medical service (EMS) personnel as set forth in 29 CFR 553.215(b). The section cited in the labor organization's comment addresses ambulance and rescue service employees of public agencies subject to the Act prior to the 1974 amendments. We therefore assume this comment is misplaced and intended to reference 29 CFR 553.215(a). Our proposed and final regulations are consistent with the pertinent DoL regulations at 29 CFR

553.215(a); therefore, we decline to change this section.

This labor organization requested modification of § 551.215(c)(2) and (3) to include all the necessary requirements, for example, that the temporary employee be hired by a fire department, that he or she be trained in fire suppression, and that he or she actually perform fire suppression activities. This labor organization also suggested that OPM remove § 551.215(c)(4) entirely, maintaining the section neither complies with the FLSA nor conforms with DoL's interpretation of the FLSA. The labor organization referred to 29 U.S.C. 203(y), stating DoL's regulations define employees in fire protection activities. They further relied on *AFGE* v. *OPM*, 821 F.2d 761, 770 (D.C. Cir. 1987) in asserting we must change our regulations ''in a manner consistent with the Secretary of Labor's implementation of the Fair Labor Standards Act.''

We agree that OPM's regulations should be consistent with the statutory definition of ''employee in fire protection activities'' in section 3(y) of the FLSA (29 U.S.C. 203(y)). We have modified proposed paragraphs (b), (c), and (d) of § 551.215 accordingly.

Section 551.216—Law Enforcement Activities and 7(k) Coverage for FLSA Pay and Exemption Determinations

As stated earlier, we reordered subpart B of the final regulations. As a result, § 551.216 in the final regulations corresponds to § 551.213 in the proposed regulations.

One labor organization and one agency objected to what they construed as applying section 7(k) to correctional officers and requested that the regulations explicitly state that such employees will not be subject to section 7(k) of the Act. This section of the regulations pertains to two distinct topics: law enforcement activities and coverage under section 7(k) provisions of the Act. The revised regulations continue OPM's longstanding policy that the section 7(k) provisions are not automatically applied to all employees who perform law enforcement activities. OPM rules provide that the section 7(k) provisions are applied to employees receiving certain types of premium pay. For example, section 7(k) is applicable to a law enforcement employee if he or she receives annual premium pay under 5 U.S.C. 5545(c)(1) for regularly scheduled standby duty, or under 5 U.S.C. 5545(c)(2) for substantial amounts of irregular, unscheduled overtime work which cannot be controlled administratively.

One agency objected to the differences between the definition of law enforcement activities for FLSA purposes, and the statutory definition of ''law enforcement officer'' (LEO) for retirement purposes in 5 U.S.C. chapters 83 and 84. The agency's objections emphasized that such a distinction undermines the long-standing determination that LEO retirement coverage extends to all employees who work within its correctional facilities. As discussed earlier, just as it is inappropriate to apply 5 U.S.C. chapters 51 and 53 definitions to terms used in the FLSA, the same holds true for the statutory definition of LEO in 5 U.S.C. chapters 83 and 84; that definition is not controlling in defining ''law enforcement officers'' for purposes of the FLSA.

One individual stated the partial listing of positions contained in §§ 551.216(c)(2) through (6) is misleading and will result in officers being inappropriately characterized as not qualifying. We note the examples provided are not exhaustive. They are meant to supplement, not take the place of, § 551.216(b). The use of these examples is consistent with DoL's regulations at 29 CFR 553.211(c). Therefore, we decline to adopt the suggestion to remove paragraphs (c)(2) through (6).

Subpart E—Overtime Pay Provisions

While not included in the proposed regulations, § 551.541 has been modified to align the language with new §§ 551.215(a) and 551.216(a), which now make clear that not all fire protection and law enforcement employees, respectively, are covered by section 7(k) of the Act. To avoid confusion, we have deleted from § 551.541(a) the language referring to employees not covered by section 7(k) so that § 551.541 deals solely with section 7(k) employees. Additionally, § 551.541(b) has been revised for continuity with § 551.541(a).

Subpart F—Child Labor

In the proposed regulations we added paragraph (c) to § 551.601 in order to define hazardous Federal fire protective activities for individuals under 18 years of age. No comments were received in response to this addition. We are adopting the proposed language as final.

Subpart G—FLSA Claims and Compliance

In this subpart of the proposed regulations, we clarified in § 551.702(c) that the claimant is responsible for retaining documentation to establish when a claim is received; in § 551.705(b) we corrected the reference from paragraph (b) to paragraph (c); and in § 551.707(a) we clarified that OPM may grant a request from a claimant to withdraw his or her claim. No comments were received in response to these revisions; therefore, we are adopting the proposed language as final.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

OPM has determined that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

E.O. 12988, Civil Justice Reform

These regulations are consistent with the requirements of E.O. 12988. The regulations clearly specify the effects on existing Federal law or regulation; provides clear legal standards; has no retroactive effects; specifies procedures for administrative and court actions; defines key terms; and is drafted clearly.

E.O. 13132, Federalism

OPM has determined these regulations will not have Federalism implications because they apply only to Federal agencies and employees. The regulations will not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates

These regulations will not result in the expenditure by State, local, or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

List of Subjects in 5 CFR Part 551

Government employees, and Wages.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending 5 CFR part 551 as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

■ 1. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the *Fair Labor Standards Act of 1938*, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f).

■ 2. Revise subpart A to read as follows:

Subpart A—General Provisions

Sec.
551.101 General.
551.102 Authority and administration.
551.103 Coverage.
551.104 Definitions.

Subpart A—General Provisions

§ 551.101 General.

(a) The Fair Labor Standards Act of 1938, as amended (referred to as ''the Act'' or ''FLSA''), provides minimum standards for both wages and overtime entitlements, and administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions and prescribes penalties for the commission of specifically prohibited acts.

(b) This part contains the regulations, criteria, and conditions set forth by the Office of Personnel Management (OPM) as prescribed by the Act, supplements and implements the Act, and must be read in conjunction with it.

(c) OPM's administration of the Act must comply with the terms of the Act but the law does not require OPM's regulations to mirror the Department of Labor's FLSA regulations. OPM's administration of the Act must be consistent with the Department of Labor's administration of the Act only to the extent practicable and only to the extent that this consistency is required to maintain compliance with the terms of the Act. For example, while OPM's executive, administrative, and professional exemption criteria are consistent with the Department of Labor's exemption criteria, OPM does not apply the highly compensated employee criteria in 29 CFR 541.601 to determine FLSA exemption status.

§ 551.102 Authority and administration.

Section 3(e)(2) of the Act authorizes the application of the provisions of the Act to any person employed by the Government of the United States, as specified in that section.

(a) *Office of Personnel Management.* Section 4(f) of the Act authorizes the Office of Personnel Management (OPM) to administer the provisions of the Act. OPM is the administrator of the provisions of the Act with respect to any person employed by an agency, except as specified in paragraphs (b), (c), and (d) of this section.

(b) The *Equal Employment Opportunity Commission* administers the equal pay provisions contained in section 6(d) of the Act.

(c) The *Department of Labor* administers the Act for the government of the District of Columbia and the following United States Government entities:

(1) The Library of Congress;
(2) The United States Postal Service;
(3) The Postal Rate Commission; and
(4) The Tennessee Valley Authority.

(d) *Office of Compliance.* The Congressional Accountability Act of 1995, as amended, sections 1301 *et seq.* of title 2, United States Code, extends rights and protections of the FLSA to employees of the following United States Government entities, and assigns certain administrative responsibilities to the Office of Compliance:

(1) The United States House of Representatives;
(2) The United States Senate;
(3) The Capitol Guide Service;
(4) The Capitol Police;
(5) The Congressional Budget Office;
(6) The Office of the Architect of the Capitol;
(7) The Office of the Attending Physician; and
(8) The Office of Compliance.

§ 551.103 Coverage.

(a) *Covered.* Any employee of an agency who is not specifically excluded by another statute is covered by the Act. This includes any person who is:

(1) Defined as an employee in section 2105 of title 5, United States Code;
(2) A civilian employee appointed under other appropriate authority; or
(3) Suffered or permitted to work by an agency whether or not formally appointed.

(b) *Not covered.* The following persons are not covered by the Act:

(1) A person appointed under appropriate authority without compensation;
(2) A trainee;
(3) A volunteer; or
(4) A member of the Uniformed Services.

§ 551.104 Definitions.

In this part—

Act or *FLSA* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*).

Administrative employee means an employee who meets the administrative exemption criteria in § 551.206.

Agency means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act and in this section, but does not include the entities of the United States Government listed in § 551.102(c) for which the Department of Labor administers the Act or § 551.102(d)(1) through (8), whose employees are covered by the Congressional Accountability Act of 1995, as amended, which makes applicable the rights and protections of the FLSA and assigns certain administrative responsibilities to the Office of Compliance.

Claim means a written allegation regarding a current or former employee concerning the employee's FLSA exemption status determination or entitlement to minimum wage or overtime pay for work performed under the Act. The term *claim* is used generically in subpart G and includes complaints under the child labor provisions of the Act.

Claim period means the time during which the cause or basis of the claim occurred.

Claimant means any party who files an FLSA claim.

Customarily and regularly means a frequency which must be greater than occasional but which may be less than constant. Tasks or work performed customarily and regularly includes work normally and recurrently performed every workweek. It does not include isolated or one-time tasks.

Directly and closely related means work that is directly and closely related to the performance of exempt work which is also considered exempt work. The phrase *directly and closely related* means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. *Directly and closely related* work may include typically nonexempt tasks that arise out of and are integral to exempt duties. Those nonexempt tasks must be performed by the exempt employee to perform his or her exempt work. Work *directly and closely related* to the performance of exempt duties may also include recordkeeping; maintaining various records pertaining to workload or employee performance; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work which both workers and supervisors are required to perform

is considered to be closely related to the primary duty of the position (for example, physical training during tours of duty for firefighting and law enforcement personnel) and is exempt work. Work is not *directly and closely* related if the work is remotely related or completely unrelated to exempt duties. The following examples illustrate the type of work that is and is not normally considered as *directly and closely related* to exempt work:

(1) Work is closely related to exempt supervisory work when it contributes to the effective supervision of subordinate workers, or the smooth functioning of the unit supervised, or both. A supervisor who spot checks and examines the work of subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to managerial and supervisory functions, so long as the checking is distinguishable from the work ordinarily performed by a nonexempt inspector.

(2) Depending upon the nature of an organization, a supervisor who sets up a machine may be engaged in exempt work. In some cases the setup work, or adjustment of the machine for a particular job, is typically performed by the same employees who operate the machine. In such cases, setup work is part of the production operation and is not exempt. In other cases, the setting up of the work is a highly skilled operation which the ordinary production worker typically does not perform. In large plants, non-supervisors may perform such work. However, particularly in small plants, such work may be a regular duty of the executive employee and is directly and closely related to the executive employee's responsibility for the subordinates' work performance and for the adequacy of the final product. In addition, performing setup work that requires special skills typically is not performed by production employees in the occupation, and does not approach the volume that would justify hiring a specially trained employee to perform. Such closely related work may include performing infrequently recurring or one-time tasks which are impractical to delegate, because they would disrupt normal operations or take longer to explain than to perform. Under such circumstances, it is exempt work.

(3) A management analyst may take extensive notes recording the flow of work and materials through an organization; the analyst may personally use a computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, such note-taking and typing would not be exempt. However, because this work is necessary for analyzing the data and making recommendations (which is exempt work), it is directly and closely related to exempt work.

(4) A traffic manager in charge of planning an organization's transportation function, including identifying the most economical and quickest routes for shipping material to and from the activity, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to material, and making the necessary rearrangements resulting from delays, damages or irregularities in transit, is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, such order-taking is a routine function and is not directly and closely related to the exempt work.

(5) An example of work directly and closely related to exempt professional duties is a chemist performing nonexempt tasks such as cleaning a test tube in the middle of an original experiment, even though such tasks can be assigned to laboratory assistants.

(6) A teacher performs work directly and closely related to exempt duties when, while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

Educational establishment means a nursery school, an elementary or secondary school system, an institution of higher education, other educational institutions, and in certain circumstances, training facilities. The term *other educational establishment* includes special schools for mentally or physically disabled or gifted children, regardless of any classification of such schools as elementary, secondary, or higher.

Emergency means a temporary condition that poses a direct threat to human life or safety, serious damage to property, or serious disruption to the operations of an activity, as determined by the employing agency.

Employ means to engage a person in an activity that is for the benefit of an agency, including any hours of work that are suffered or permitted.

Employee means a person who is employed—

(1) As a civilian in an Executive agency, as defined in section 105 of title 5, United States Code;

(2) As a civilian in a military department, as defined in section 102 of title 5, United States Code;

(3) In a nonappropriated fund instrumentality of an Executive agency or a military department;

(4) In a unit of the judicial branch of the Government that has positions in the competitive service; or

(5) In the Government Printing Office.

Employer, as defined in section 3(d) of the Act, means any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

Executive employee means an employee who meets the executive exemption criteria in § 551.205.

Exempt area means any foreign country, or any territory under the jurisdiction of the United States, other than the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The U.S. Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Commonwealth of the Northern Mariana Islands;

(9) Midway Atoll;

(10) Wake Island;

(11) Johnston Island; and

(12) Palmyra.

Filed means a claim has been properly submitted by the claimant. The claimant must deliver the claim to the appropriate office within the agency or OPM, whichever is deciding the FLSA claim. The claim must be postmarked or date-stamped in order to establish the time of delivery.

FLSA exempt means not covered by the minimum wage and overtime provisions of the Act.

FLSA exemption status means an employee's designation as either FLSA exempt or FLSA nonexempt from the minimum wage and overtime provisions of the Act.

FLSA nonexempt means covered by the minimum wage and overtime provisions of the Act.

FLSA overtime pay means overtime pay under this part.

FLSA pay claim means a claim concerning an employee's entitlement to minimum wage or overtime pay for work performed under the Act.

Formulate, affect, interpret, or implement management policies or operating practices means perform work that involves management policies or operating practices which range from

specific objectives and practices of a small field office to broad national goals expressed in statutes or Executive orders. Employees performing such work make policy decisions or participate indirectly through developing or recommending proposals that are acted on by others. The work of employees who significantly affect the execution of management policies involves obtaining compliance with such policies by other individuals or organizations, within or outside of the Federal Government, or making significant determinations furthering the operation of programs and accomplishment of program objectives. Administrative employees engaged in such work typically perform one or more phases of program management (that is, planning, developing, promoting, coordinating, controlling, or evaluating operating programs of the employing organization or of other organizations subject to regulation or other controls).

Hours of work means all time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency. Hours of work are creditable for the purpose of determining overtime pay under subpart D of this part. Section 551.401 of subpart D further explains this term. However, whether time is credited as hours of work is determined by considering many factors, such as the rules in subparts D and E of this part, provisions of law, Comptroller General decisions, OPM decisions and policy guidance, agency policy, negotiated agreements, the rules in part 550 of this chapter (for hours of work for travel), and the rules in part 410 of this chapter (for hours of work for training).

Management means performing activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or financial records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment, or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

Nonexempt area means any of the following locations:

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The U.S. Virgin Islands;

(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Commonwealth of the Northern Mariana Islands;

(9) Midway Atoll;

(10) Wake Island;

(11) Johnston Island; and

(12) Palmyra.

Official position means the position to which the employee is officially assigned by means of a personnel action authorized by the agency.

Perform work in connection with an emergency means perform work that is directly related to resolving or coping with an emergency, or its immediate aftermath, as determined by the employing agency.

Preserve the claim period means establish the period of possible entitlement to back pay by filing a written claim. The date the agency or OPM receives the claim preserves the claim period and is the date that determines the period of possible entitlement to back pay.

Primary duty typically means the duty that constitutes the major part (over 50 percent) of an employee's work. A duty constituting less than 50 percent of an employee's work (alternative primary duty) may be credited as the primary duty for exemption purposes provided that duty:

(1) Constitutes a substantial, regular part of the work assigned and performed;

(2) Is the reason for the existence of the position; and

(3) Is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment as discussed in § 551.206, and the significance of the decisions made.

Professional employee means an employee who meets the professional exemption criteria in § 551.207.

Reckless disregard of the requirements of the Act means failure to make adequate inquiry into whether conduct is in compliance with the Act.

Recognized organizational unit means an established and defined organizational entity which has regularly assigned employees and for which a supervisor is responsible for planning and accomplishing a continuing workload. This distinguishes supervisors from leaders of temporary groups formed to perform assignments of limited duration.

(1) The term *recognized organizational unit* is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A recognized organizational unit must have a permanent status and a continuing function. For example, a large human resources department might have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and recruitment and placement, each of which has a permanent status and function.

(2) A recognized organizational unit may move from place to place. The mere fact that the employee works in more than one location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized organizational unit with a continuing function in the organization.

(3) Continuity of the same subordinates is not essential to the existence of a recognized organizational unit with a continuing function. An otherwise exempt employee will not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized organizational units, if other factors are present that indicate the employee is in charge of a recognized organizational unit with a continuing function.

Statute of limitations means the time frame within which an FLSA pay claim must be filed, starting from the date the right accrued. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations, except in cases of willful violation where the statute of limitations is 3 years.

Suffered or permitted work means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

Title 5 overtime pay, for the purpose of § 551.211, means overtime pay under part 550 of this chapter.

Trainee means a person who does not meet the definition of ''employee'' in this section and who is assigned or attached to a Federal activity primarily for training. A person who attends a training program under the following conditions is considered a trainee and is

not a Federal employee for purposes of the Act:

(1) The training, even though it includes actual operation of the facilities of the Federal activity, is similar to that given in a vocational school or other institution of learning;

(2) The training is for the benefit of the individual;

(3) The trainee does not displace regular employees, but is supervised by them;

(4) The Federal activity which provides the training derives no immediate advantage from the activities of the trainee; on occasion its operations may actually be impeded;

(5) The trainee is not necessarily entitled to a job with the Federal activity at the completion of the training period; and

(6) The agency and the trainee understand that the trainee is not entitled to the payment of wages from the agency for the time spent in training.

Two or more other employees means the equivalent of two or more full-time employees. For the purpose of this definition, an employee is equal to a full-time equivalent (FTE). For example, one full-time and two half-time employees are equivalent to two full-time employees.

Volunteer means a person who does not meet the definition of *employee* in this section and who volunteers or donates his or her service, the primary benefit of which accrues to the performer of the service or to someone other than the agency. Under such circumstances there is neither an expressed nor an implied compensation agreement. Services performed by such a volunteer include personal services that, if left unperformed, would not necessitate the assignment of an employee to perform them.

Willful violation means a violation in circumstances where the agency knew that its conduct was prohibited by the Act or showed reckless disregard of the requirements of the Act. All of the facts and circumstances surrounding the violation are taken into account in determining whether a violation was willful.

Workday means the period between the commencement of the principal activities that an employee is engaged to perform on a given day and the cessation of the principal activities for that day. The term is further explained in § 551.411.

Worktime, for the purpose of determining FLSA exemption status, means time spent actually performing work. This excludes periods of time during which an employee performs no work, such as standby time, sleep time, meal periods, and paid leave.

Worktime in a representative workweek means the average worktime over a period long enough to even out normal fluctuations in workloads and is representative of the job as a whole.

Workweek means a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to part 610 of this chapter, the workweek must be the same as the administrative workweek defined in § 610.102 of this chapter.

Workweek basis means the unit of time used as the basis for applying overtime standards under the Act and, for employees under flexible or compressed work schedules, under 5 U.S.C. 6121(6) or (7). The Act takes a single workweek as its standard (except for employees engaged in fire protection or law enforcement activities under section 7(k) of the Act) and does not permit the averaging of hours over two or more weeks, except for employees engaged in fire protection or law enforcement activities under section 7(k) of the Act.

■ 3. Revise subpart B to read as follows:

Subpart B—Exemptions and Exclusions

Sec.
551.201 Agency authority.
551.202 General principles.
551.203 Salary-based nonexemption.
551.204 Nonexemption of certain employees.
551.205 Executive exemption criteria.
551.206 Administrative exemption criteria.
551.207 Professional exemption criteria.
551.208 Learned professionals.
551.209 Creative professionals.
551.210 Computer employees.
551.211 Effect of performing different work or duties for a temporary period of time on FLSA exemption status.
551.212 Foreign exemption criteria.
551.213 Exemption of employees receiving availability pay.
551.214 Statutory exclusion.
551.215 Fire protection activities and 7(k) coverage for FLSA pay and exemption determinations.
551.216 Law enforcement activities and 7(k) coverage for FLSA pay and exemption determinations.

Subpart B—Exemptions and Exclusions

§ 551.201 Agency authority.

The employing agency must review and make a determination on each employee's exemption status.

§ 551.202 General principles.

In all exemption determinations, the agency must observe the following principles:

(a) Each employee is presumed to be FLSA nonexempt unless the employing agency correctly determines that the employee clearly meets the requirements of one or more of the exemptions of this subpart and such supplemental interpretations or instructions issued by OPM. The agency must designate an employee FLSA exempt when the agency correctly determines that the employee meets the requirements of one or more of the exemptions of this subpart and such supplemental interpretations or instructions issued by OPM.

(b) Exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(c) The burden of proof rests with the agency that asserts the exemption.

(d) An employee who clearly meets the criteria for exemption must be designated FLSA exempt. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee will be designated FLSA nonexempt.

(e) While established position descriptions and titles may assist in making initial FLSA exemption determinations, the designation of an employee as FLSA exempt or nonexempt must ultimately rest on the duties actually performed by the employee.

(f) Although separate criteria are provided for the exemption of executive, administrative, and professional employees, those categories are not mutually exclusive. Employees who perform a combination of exempt duties set forth in this regulation may also qualify for exemption. For example, an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption, i.e., work that is exempt under one section of this part will not defeat the exemption under any other section.

(g) Failure to meet the criteria for exemption under what might appear to be the most obvious criteria does not preclude exemption under another category. For example, an engineering technician who fails to meet the professional exemption criteria may be performing exempt administrative work, or an administrative officer who fails to meet the administrative criteria may be performing exempt executive work.

(h) Although it is normally feasible and more convenient to identify a single exemption category, this is not always

appropriate. An exemption may be based on a combination of functions, no one of which constitutes the primary duty, or the employee's primary duty may involve two categories which are intermingled and difficult to segregate. This does not preclude designating an employee FLSA exempt, provided the work as a whole clearly meets the other exemption criteria. The agency is responsible for showing and documenting that the work as a whole clearly meets one or more of the exemption criteria.

§ 551.203 Salary-based nonexemption.

(a) An employee, including a supervisory employee, whose annual rate of basic pay is less than $23,660 is nonexempt, unless:

(1) The employee is subject to § 551.211 (Effect of performing different work or duties for a temporary period of time on FLSA exemption status); or

(2) The employee is subject to § 551.212 (Foreign exemption criteria); or

(3) The employee is a professional engaged in the practice of law or medicine as prescribed in paragraphs (c) and (d) of § 551.208.

(b) For the purpose of this section, ''rate of basic pay'' means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable locality payment under 5 CFR part 531, subpart F, special rate supplement under 5 CFR part 530, subpart C, or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind, such as premium payments, differentials, and allowances.

§ 551.204 Nonexemption of certain employees.

(a) Certain nonsupervisory white-collar employees are FLSA nonexempt (unless the employees are subject to § 551.211 (Effect of performing different work or duties for a temporary period of time on FLSA exemption status) or § 551.212 (Foreign exemption criteria)) because they do not fit any of the exemption categories. They include:

(1) Employees in equipment operating and protective occupations, and most clerical occupations;

(2) Employees performing technician work in positions properly classified below GS–9 (or the equivalent level in other white-collar pay systems) and many, but not all, of those positions properly classified at GS–9 or above (or the equivalent level in other white-collar pay systems); and

(3) Employees at any grade, or equivalent level, in occupations requiring highly specialized, technical skills and knowledge that can be acquired only through prolonged job training and experience, such as in the Air Traffic Control series, or in the Aircraft Operations series unless such employees are performing predominantly administrative functions rather than the technical work of the occupation.

(b) Nonsupervisory employees in the Federal Wage System or in other comparable wage systems are nonexempt, unless the employees are subject to § 551.211 (Effect of performing different work or duties for a temporary period of time on FLSA exemption status) or § 551.212 (Foreign exemption criteria).

§ 551.205 Executive exemption criteria.

(a) An *executive employee* is an employee whose primary duty is management (as defined in § 551.104) of a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and who:

(1) *Customarily and regularly directs* the work of two or more other employees. However, an employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement. In addition, hours worked by an employee cannot be credited more than once for different executives. This takes into consideration those organizations that use matrix management, i.e., a system of ''shared'' leadership, where supervision cuts across product and service lines in terms of accessing activities and advising top management on business operations, but where the supervisor/leader does not have the operating authority over all employees. Thus, a shared responsibility for the supervision of the same two employees in the same recognized organizational unit does not satisfy this requirement. However, a full-time employee who works 4 hours for one supervisor and 4 hours for a different supervisor will be credited as a half-time employee for both supervisors; and

(2) Has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees, are given particular weight.

(b) *Particular weight.* Criteria to determine whether an employee's suggestions and recommendations are given particular weight by higher-level management include, but are not limited to: whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. Particular weight does not include consideration of an occasional suggestion with regard to the change in status of a co-worker. An employee's suggestions and recommendations may still be deemed to have particular weight even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

§ 551.206 Administrative exemption criteria.

An *administrative employee* is an employee whose primary duty is the performance of office or non-manual work directly related to the management or general business operations, as distinguished from production functions, of the employer or the employer's customers and whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

(a) In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term ''matters of significance'' refers to the level of importance or consequence of the work performed.

(b) The phrase *discretion and independent judgment* must be applied in light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to, whether the employee:

(1) Has authority to formulate, affect, interpret, or implement management policies or operating practices;

(2) Carries out major assignments in conducting the operations of the organization;

(3) Performs work that affects the organization's operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the organization;

(4) Has authority to commit the employer in matters that have significant financial impact;

(5) Has authority to waive or deviate from established policies and procedures without prior approval;

(6) Has authority to negotiate and bind the organization on significant matters;

(7) Provides consultation or expert advice to management;

(8) Is involved in planning long- or short-term organizational objectives;

(9) Investigates and resolves matters of significance on behalf of management; and

(10) Represents the organization in handling complaints, arbitrating disputes, or resolving grievances.

(c) The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, an employee can exercise discretion and independent judgment even if the employee's decisions or recommendations are reviewed at a higher level. Thus, the term *discretion and independent judgment* does not require that decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment.

(d) An organization's workload may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each such employee does not involve the exercise of discretion and independent judgment with respect to matters of significance.

(e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures, or specific standards described in manuals or other sources.

(f) The use of manuals, guidelines, or other established procedures containing or relating to highly technical, scientific, legal, financial, or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills does not preclude exemption. Such manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of such reference material would not affect an employee's exemption status. However, employees who simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances will be nonexempt.

(g) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not exercise discretion and independent judgment with respect to matters of significance even though serious consequences may flow from the employee's neglect. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

(h) Employees in certain occupations typically assist and support line managers and assume facets of the overall management function. Neither the location of the work nor the number of employees performing the same or similar work turns such work into a production function. For example, independent agencies or agency components often provide centralized human resources, information systems, procurement and acquisition, or financial management services as support services to other agencies or agency components. However, this does not change the inherent administrative nature of the work performed to line or production work. Similarly, employees who develop, interpret, and oversee agency or Governmentwide policy are performing management support functions. Some of these activities may be performed by employees who would otherwise qualify under another exemption.

Depending upon the purpose of the work and the organizational context, work in certain occupations may be either exempt or nonexempt. For example, criminal investigators who perform work directly related to the internal management of the agency and typically would be expected to provide recommendations of great significance based on the analysis of investigative findings would likely be considered as performing a staff function. In contrast, the performance of investigative and inspectional work to confirm whether specific regulatory requirements have been met for an investigative/inspectional component of any agency would likely be considered as performing a line rather than a staff function.

(i) An employee who leads a team of other employees assigned to complete major projects (such as acquisitions; negotiating real estate transactions or collective bargaining agreements; designing and implementing productivity improvements; oversight, compliance, or program reviews; investigations) generally meets the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team. An example is a lead auditor who oversees an audit team in an auditing agency and who is assigned responsibility for leading a major audit requiring the use of substantial agency resources. This auditor is responsible for proposing the parameters of the audit and developing a plan of action and milestones to accomplish the audit. Included in the plan are the methodologies to be used, the staff and other resources required to conduct the audit, proposed staff member assignments, etc. When conducting the audit, the lead auditor makes on-site decisions and/or proposes major changes to managers on matters of significance in accomplishing the audit, including deviations from established policies and practices of the agency.

(j) An executive assistant or administrative assistant to a high level manager or senior executive generally meets the duties requirements for the administrative exemption if such employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance.

(k) Human resources employees who formulate, interpret or implement human resources management policies generally meet the duties requirements for the administrative exemption. In addition, when interviewing and screening functions are performed by the human resources employee who makes the hiring decision or makes recommendations for hiring from a pool of qualified applicants, such duties constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(l) Management analysts who study the operations of an organization and propose changes in the organization, program analysts who study program

operations and propose changes to the program, and other management advisors generally meet the duties requirements for the administrative exemption.

(m) Acquisition employees with authority to bind the organization to significant purchases generally meet the duties requirements for the administrative exemption even if they must consult with higher management officials when making a commitment.

(n) Ordinary inspection work generally does not meet the duties requirements for the administrative exemption. Inspectors normally perform specialized work along standardized lines involving well-established techniques and procedures which may have been catalogued and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They have some leeway in the performance of their work but only within closely prescribed limits.

§ 551.207 Professional exemption criteria.

To qualify for the professional exemption, an employee's primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. Learned professionals, creative professionals, and computer employees are described in §§ 551.208, 551.209, and 551.210, respectively.

§ 551.208 Learned professionals.

(a) To qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. The work must include the following three elements:

(1) The employee must perform work requiring advanced knowledge. Work requiring advanced knowledge is predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level;

(2) The advanced knowledge must be in a field of science or learning which includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning; and

(3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction which restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word ''customarily'' means that the exemption is appropriate for employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. For example, the learned professional exemption is appropriate in unusual cases where a lawyer has not gone to law school, or a chemist does not possess a degree in chemistry. However, the learned professional exemption is not applicable to occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical, or physical processes. The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced specialized intellectual instruction. The position of Engineering Technician is an example of such an occupation where the employee collects, observes, tests and records factual scientific data within the oversight of professional engineers, and performs work using knowledge acquired through on-the-job and classroom training rather than by acquiring the knowledge through prolonged academic study.

(b) *Expansion of professional exemption.* The areas in which the professional exemption may be applicable are expanding. As knowledge is developed, academic training is broadened and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When an advanced specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession. Accrediting and certifying organizations similar to those listed in this section also may be created in the future. Such organizations may develop similar, specialized curriculums and certification programs which, if a standard requirement for a particular occupation, may indicate that the occupation has acquired the characteristics of a learned profession.

(c) *Practice of law.* (1) This exemption applies to an employee in a professional legal position requiring admission to the bar and involved in preparing cases for trial and/or the trial of cases before a court or an administrative body or persons having quasi-judicial power; rendering legal advice and services; preparing interpretive and administrative orders, rules, or regulations; drafting, negotiating, or examining contracts or other legal documents; drafting, preparing formal comments, or otherwise making substantive recommendations with respect to proposed legislation; editing and preparing for publication statutes enacted by Congress and opinions or decisions of a court, commission, or board; and drafting and reviewing decisions for consideration and adoption by agency officials.

(2) Section 551.203 (Salary-based nonexemption) does not apply to the employees described in this section.

(d) *Practice of medicine.* (1) An employee who holds a valid license or certificate permitting the practice of medicine or any of its branches and is actually engaged in the practice of the profession is exempt. The exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term ''physicians'' includes medical doctors, including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(2) An employee who holds the required academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession is exempt. Employees engaged in internship or resident

programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

(3) Section 551.203 (Salary-based nonexemption) does not apply to the employees described in this section.

(e) *Accounting.* Certified public accountants generally meet the duties requirements for the learned professional exemption. An employee performing similar professional work in a position with a positive educational requirement and requiring the application of accounting theories, concepts, principles, and standards may qualify as an exempt learned professional. However, accounting clerks and technicians and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals.

(f) *Engineering.* Engineers generally meet the duties requirements for the learned professional exemption. Professional engineering work typically involves the application of a knowledge of such engineering fundamentals as the strength and strain analysis of engineering materials and structures, the physical and chemical characteristics of engineering materials such as elastic limits, maximum unit stresses, coefficients of expansion, workability, hardness, tendency to fatigue, resistance to corrosion, engineering adaptability, and engineering methods of construction and processing. Exempt professional engineering work includes equivalent work performed in any of the specialized branches of engineering (e.g., electrical, mechanical, or materials engineering). On unusual occasions, engineering technicians performing work comparable to that performed by professional engineers on the basis of advanced knowledge may also be exempt. In such instances, the employee actually is performing the work of an occupation that generally requires a specialized academic degree and is performing substantially the same work as the degreed employee, but has gained the same advanced knowledge through a combination of work experience and intellectual instruction which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field.

(g) *Architecture.* Architects generally meet the duties requirements for the learned professional exemption. Professional architectural work typically requires knowledge of architectural principles, theories, concepts, methods, and techniques; a creative and artistic sense; and an understanding and skill to use pertinent aspects of the construction industry, as well as engineering and the physical sciences related to the design and construction of new, or the improvement of existing, buildings.

(h) *Teachers.* A teacher is any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed.

(1) A teacher performs exempt work when serving, for example, as a regular academic teacher; teacher of kindergarten or nursery school pupils; teacher of gifted or disabled children; teacher of skilled and semi-skilled trades and occupations; teacher engaged in automobile driving instruction; aircraft flight instructor; home economics teacher; or vocal or instrumental music instructor. A faculty member who is engaged as a teacher but also spends a considerable amount of time in extracurricular activities such as coaching athletic teams or acting as a moderator or advisor in such areas as drama, speech, debate, or journalism is engaged in teaching. Such activities are a recognized part of an educational establishment's responsibility in contributing to the educational development of the student. An instructor in an institution of higher education or another educational establishment whose primary duty is teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge is also an exempt teacher.

(2) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by appropriate certifying entities. However, a teacher's certificate is not generally necessary for post-secondary educational establishments.

(3) Exempt teachers do not include teachers of skilled and semi-skilled trade, craft, and laboring occupations when the paramount knowledge is the knowledge of and the ability to perform the trade, craft, or laboring occupation. Conversely, if the primary requirement of the post-secondary education instructor is the ability to instruct, as opposed to knowledge of and ability to perform a trade, craft, or laboring occupation, then the position may be exempt.

(4) Section 551.203 (Salary-based nonexemption) does not apply to the employees described in this section.

(i) *Medical technologists.* Registered or certified medical technologists who have successfully completed 3 academic years of pre-professional study in an accredited college or university, plus a 4th year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association, generally meet the duties requirements for the learned professional exemption.

(j) *Nurses.* Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. Licensed practical nurses and other similar health care employees, however, generally do not qualify as exempt learned professionals because possession of a specialized advanced academic degree is not a standard prerequisite for entry into such occupations.

(k) *Dental hygienists.* Dental hygienists who have successfully completed 4 academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association generally meet the duties requirements for the learned professional exemption.

(l) *Physician assistants.* Physician assistants who have successfully completed 4 academic years of pre-professional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, and who are certified by the National Commission on Certification of Physician Assistants, generally meet the duties requirements for the learned professional exemption.

(m) *Paralegals.* Paralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced, specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general 4-year advanced degrees, most specialized paralegal programs are 2-year associate degree programs from a community college or equivalent institution. However, the learned professional exemption is applicable to paralegals who possess advanced, specialized

degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. In addition, a paralegal who fails to meet the professional exemption criteria may be performing exempt administrative work, e.g., overseeing a full range of support services for a large legal office.

§ 551.209 Creative professionals.

(a) To qualify for the creative professional exemption, an employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical, or physical work. The work performed must be ''in a recognized field of artistic or creative endeavor,'' including such fields as music, writing, acting, and the graphic arts. The exemption does not apply to work which can be produced by a person with general manual or intellectual ability and training. The requirement of ''invention, imagination, originality, or talent'' distinguishes the creative professions from work that primarily depends on intelligence, diligence, and accuracy. The duties of employees vary widely, and exemption as a creative professional depends on the extent of the invention, imagination, originality, or talent exercised by the employee. Determination of exempt creative professional status must be made on a case-by-case basis. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; and writers who choose their own subjects and hand in a finished piece of work to their employers. This requirement generally is not met by a person who is employed as a retoucher of photographs, since such work is not properly described as creative in character.

(b) Federal employees engaged in the work of newspapers, magazines, television, or other media are not exempt creative professionals if they only collect, organize, and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product. For example, employees who merely rewrite press releases or who write standard recounts of public information by gathering facts on routine community events are not exempt creative professionals. Employees also do not qualify as exempt creative professionals if their work product is subject to substantial control by the organization. However, when the work requires invention, imagination, originality, or talent, as opposed to work which depends primarily on intelligence, diligence, and accuracy, such employees may qualify as exempt creative professionals if their primary duty is performing on the air in radio, television or other electronic media; conducting investigative interviews; analyzing or interpreting public events; writing editorials, opinion columns, or other commentary; or acting as a narrator or commentator. Work that does not fully meet the creative professional exemption criteria does not preclude exemption under another exemption category. For example, public affairs work under control of the organization that does not meet the creative professional exemption may meet the administrative exemption.

§ 551.210 Computer employees.

(a) Computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.

(b) The exemption in section 13(a)(1) of the Act applies to any computer employee whose annual remuneration exceeds the salary-based nonexemption prescribed in § 551.203. The exemption in section 13(a)(17) applies to any computer employee compensated on an hourly basis at a rate of basic pay (as defined in § 551.203(b)) not less than $27.63 an hour. In addition, these exemptions apply only to computer employees whose primary duties consist of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

(c) *Computer manufacture and repair.* The exemption for employees in computer occupations does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations as identified in paragraph (b) of this section, are also not exempt computer professionals.

(d) *Executive and administrative computer employees.* Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties which qualify the employees for exemption under this subpart. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific or engineering problems of the organization or the organization's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized organizational unit, and whose recommendations regarding the hiring, firing, advancement, promotion, or other change of status of the other programmers are given particular weight, generally meets the duties requirements for the executive exemption. Alternatively, a senior or lead computer programmer who leads a team of other employees assigned to complete a major project that is directly related to the management or general business operations of the employer or the employer's customers generally meets the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team.

§ 551.211 Effect of performing different work or duties for a temporary period of time on FLSA exemption status.

(a) *Applicability.* Performing different work or duties for a temporary period of time may affect an employee's exemption status.

(1) *When applicable.* This section applies only when an employee must perform work or duties that are not consistent with the employee's primary duties for an extended period, that is, for more than 30 consecutive calendar

days—the ''30-day test.'' The period of performing different work or duties may or may not involve a different geographic duty location. The exemption status of an employee temporarily performing different work or duties must be determined as described in this section.

(2) *When not applicable.* This section does not apply when an employee is detailed to an identical additional position as the employee's position or to a position at the same level with the same basic duties and exemption status as the employee's position.

(b) An agency generally may not change an employee's exemption status based on a snapshot of the employee's duties during a particular week, unless the week involves emergency work under paragraph (f) of this section. An agency must:

(1) Assess an employee's temporary work or duties over a reasonable period of time (the 30-day test), compare them with the primary duties upon which the employee's exemption status is based, and determine the employee's exemption status as described in §§ 551.203 through 551.210; and

(2) Ensure that it does not avoid reassessing, and perhaps changing, an employee's exemption status by breaking up periods of temporary work or duties with periods of having the employee perform his or her regular work or duties. For example, an agency may not assign exempt employees to perform nonexempt work or duties for 29 consecutive calendar days, return them to their exempt duties for two or three days, then assign them again to perform nonexempt work for another 29 days.

(c) Aggregation of more than 30 nonconsecutive calendar days over an extended period does not meet the 30-day test and may not be used to change an employee's exemption status. For example, if an exempt employee performs nonexempt duties 4 days in one week, 2 days in the following week, and so on over a period of weeks or months, the days of nonexempt work may not be aggregated for the purpose of changing the employee's exemption status.

(d) *Effect on nonexempt employees.* (1) A nonexempt employee who must temporarily perform work or duties that are different from the employee's primary duties remains nonexempt for the entire period of temporary work or duties unless both of the following conditions are met:

(i) The period of temporary work or duties exceeds 30 consecutive calendar days; and

(ii) The employee's primary duties for the period of temporary work are exempt as defined in this part.

(2) If a nonexempt employee becomes exempt under the criteria in paragraph (d)(1) of this section:

(i) The employee must be considered exempt for the entire period of temporary work or duties; and

(ii) If the employee received FLSA overtime pay for work performed during the first 30 calendar days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee is no longer entitled to the FLSA overtime pay received but may be owed title 5 overtime pay, or its equivalent.

(e) *Effect on exempt employees.* (1) An exempt employee who must temporarily perform work or duties that are different from the employee's primary duties remains exempt for the entire period of temporary work or duties unless both of the following conditions are met:

(i) The period of temporary work or duties exceeds 30 consecutive calendar days; and

(ii) The employee's primary duties for the period of temporary work are not exempt as defined in this part.

(2) If an exempt employee becomes nonexempt under the criteria in paragraph (e)(1) of this section:

(i) The employee must be considered nonexempt for the entire period of temporary work or duties; and

(ii) If the employee received title 5 overtime pay, or its equivalent, for work performed during the first 30 consecutive calendar days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee may no longer be entitled to some or all of the title 5, or equivalent, overtime pay received but may be owed FLSA overtime pay.

(f) *Emergency situation.* Notwithstanding any other provision of this section, and regardless of an employee's grade or equivalent level, the agency may determine that an emergency situation exists that directly threatens human life or safety, serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to temporarily perform work or duties in connection with the emergency. In such a designated emergency:

(1) *Nonexempt employee.* A nonexempt employee remains nonexempt whether the employee performs nonexempt work or exempt work during the emergency; and

(2) *Exempt employee.* The exemption status of an exempt employee must be determined on a workweek basis. The exemption status determination of exempt employees will result in the employee either remaining exempt or becoming nonexempt for that workweek, as described in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(i) *Remain exempt.* An exempt employee remains exempt for any workweek in which the employee's primary duties for the period of emergency work are exempt as defined in this part.

(ii) *Become nonexempt.* An exempt employee becomes nonexempt for any workweek in which the employee's primary duties for the period of emergency work are nonexempt as defined in this part.

§ 551.212 Foreign exemption criteria.

Foreign exemption means a provision of the Act under which the minimum wage, overtime, and child labor provisions of the Act do not apply to any employee who spends all hours of work in a given workweek in an exempt area.

(a) *Application.* When the foreign exemption applies, the minimum wage, overtime, and child labor provisions of the Act do not apply to any employee who spends all hours of work in a given workweek in an exempt area. When an employee meets one of the two criteria in paragraph (b) of this section, the foreign exemption applies until the employee spends any hours of work in any nonexempt area as defined in § 551.104.

(b) *Foreign exemption applies.* If an employee meets one of the two following criteria, the employee is subject to the foreign exemption of the Act and the minimum wage, overtime, and child labor provisions of the Act do not apply:

(1) The employee is permanently stationed in an exempt area and spends all hours of work in a given workweek in one or more exempt areas; or

(2) The employee is not permanently stationed in an exempt area, but spends all hours of work in a given workweek in one or more exempt areas.

(c) *Foreign exemption does not apply.* For any given workweek, the minimum wage, overtime, and child labor provisions of the Act apply to an employee permanently stationed in an exempt area who spends any hours of work in any nonexempt area. For that workweek, the employee is not subject to the foreign exemption, and the agency must determine the exemption

status of such an employee as described in paragraphs (c)(1) and (c)(2) of this section. The foreign exemption does not resume until the employee again meets one of the criteria in paragraph (b) of this section.

(1) *Same duties.* If the duties performed during that workweek are consistent with the primary duties of the employee's official position, the agency must designate the employee the same FLSA exemption status as if the employee were permanently stationed in any nonexempt area.

(2) *Different duties.* If the duties performed during that workweek are not consistent with the primary duties of the employee's official position:

(i) The agency must first designate the employee the same FLSA exemption status as the employee would have been designated based on the duties included in the employee's official position if the employee was permanently stationed in any nonexempt area; and

(ii) The agency must determine the employee's exemption status for that workweek by applying § 551.211.

(d) *Resumption of foreign exemption.* When an employee returns to any exempt area from performing any hours of work in any nonexempt area, the employee is not subject to the foreign exemption until the employee meets one of the criteria in paragraph (b) of this section.

§ 551.213 Exemption of employees receiving availability pay.

The following employees are exempt from the hours of work and overtime pay provisions of the Act:

(a) A criminal investigator receiving availability pay under § 550.181(a) of this chapter, as provided in 29 U.S.C. 213(a)(16)];

(b) A pilot employed by U.S. Customs and Border Protection or its successor who is a law enforcement officer as defined in section 5541(3) of title 5, United States Code, and who receives availability pay under section 5545a(i) of title 5, United States Code.

§ 551.214 Statutory exclusion.

A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) of 19 U.S.C. 267 and under 19 CFR 24.16 for time worked may not receive pay or other compensation for that work under any other provision of law.

§ 551.215 Fire protection activities and 7(k) coverage for FLSA pay and exemption determinations.

(a) The Office of Personnel Management may determine that the provisions of section 7(k) of the Act apply to certain categories of fire protection employees based on appropriate factors, such as the type of premium payments they receive (see § 551.501(a)(1) and (5) and § 551.541).

(b) *Fire protection activities.* Fire protection activities involve the performance of functions directly concerned with the response to and the control and extinguishment of fires; or performance of inspection of facilities and equipment for the primary purpose of reducing or eliminating fire hazards by trained firefighters eligible for reassignment to fire control and suppression or prevention duties; or provision of the primary (i.e., the first called) rescue and ambulance service in connection with fire protection functions.

(c) *Engaged in fire protection activities.* (1) An employee (including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker) is considered engaged in fire protection activities for the purpose of determining possible application of section 7(k) of the Act as provided for in § 551.501(a)(1) and (5) and § 551.541 if the employee:

(i) Is trained in fire suppression, has authority and responsibility to engage in fire suppression, and is employed by an organization with fire suppression as a primary mission; and

(ii) Is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

(2) Subject to the requirements of paragraph (c)(1) of this section, the following types of employees are engaged in fire protection activities for the purpose of determining possible application of section 7(k) of the Act:

(i) Employees in positions properly classified in the Fire Protection and Prevention series, including any qualified firefighter who is assigned to perform support functions (e.g., communications or dispatching functions, equipment maintenance or repair) or who is transferred to an administrative or supervisory position within the fire protection activity, except when such administrative or supervisory work exempts the employee under executive, administrative, and professional considerations;

(ii) Employees in positions properly classified in other series, such as Forestry Technician, for whom fire protection functions constitute substantially full-time assignments throughout the year, or for the duration of a specified fire season within the year;

(iii) Temporary employees hired solely to perform fire suppression work on an as-needed basis;

(iv) Members of rescue and ambulance crews with fire suppression training, authority, and responsibility, who are part of a fire suppression organization, as described in paragraph (c)(1)(i) of this section; and

(v) Any other employee in any workweek in which the employee performs fire control or suppression work for 80 percent or more of the total hours worked.

(d) *Not engaged in fire protection activities.* Examples of types of employees who are not engaged in fire protection activities for the purpose of applying section 7(k) of the Act (as provided for in § 551.501(a)(1) and (5) and § 551.541) include the following:

(1) Professional engineers, engineering technicians, and similar employees involved in fire protection research or in the design and development of fire protection and prevention equipment and materials;

(2) Employees who perform functions that support fire protection activities but who are *not* trained, qualified firefighters eligible for reassignment to fire control and suppression or prevention duties. Supporting functions (such as maintenance of fire apparatus, equipment, alarm systems, etc., or communications and dispatching work or preparation of records and reports) are included when performed by firefighters but are *not* included when performed by mechanics, communications systems and radio operators, clerks, or other employees;

(3) Employees whose primary duties are *not* related to fire protection but who perform fire control or suppression work on an as needed basis, *provided* that the fire control or suppression work constitutes less than 80 percent of the employees' hours of work within any workweek; and

(4) Employees on rescue and ambulance crews who:

(i) Are not trained in fire suppression;

(ii) Do not have fire suppression authority and responsibility; or

(iii) Are employed by an organization, such as a hospital, that does not have fire suppression as a primary mission.

§ 551.216 Law enforcement activities and 7(k) coverage for FLSA pay and exemption determinations.

(a) The Office of Personnel Management may determine that the provisions of section 7(k) of the Act apply to certain categories of law enforcement employees based on appropriate factors, such as the type of premium payments they receive (see § 551.501(a)(1) and (5) and § 551.541).

(b) *Law enforcement activities.* Law enforcement activities involve work directly and primarily concerned with:

(1) Patrol and control functions that include patrolling an area to enforce law and order and to protect the lives, property, and civil rights of individuals through the prevention and detection of criminal acts; responding to complaints, violations, accidents, and emergencies; investigating for clues at the scene of a crime, interviewing witnesses, and evaluating evidence to locate suspects; and apprehending and arresting persons suspected of, or wanted for, criminal violations under a statutorily prescribed arrest authority;

(2) Executing the orders of a Federal court, including serving civil writs and criminal warrants issued by Federal courts; tracing and arresting persons wanted by warrants; and seizing and disposing of property under court orders;

(3) Planning and conducting investigations relating to alleged or suspected violations of criminal laws, including the arrest of suspected or wanted persons under a statutorily prescribed arrest authority;

(4) Security functions in a correctional institution involving direct custody and safeguarding of inmates charged with or convicted of violations of criminal laws; or

(5) Rescue and ambulance functions that provide the primary (i.e., the first called) service in connection with law enforcement activities described above.

(c) *Engaged in law enforcement activities.* The following employees are engaged in law enforcement activities for the purpose of determining possible application of section 7(k) of the Act as provided for in § 551.501(a)(1) and (5) and § 551.541:

(1) Employees in positions properly classified in the Police series, and employees in positions that would be otherwise classifiable in that series if covered by classification criteria of chapter 51 of title 5, U.S. Code;

(2) Employees in positions properly classified as Border Patrol Agents, Customs Patrol Officers, and other employees whose primary duties involve similar patrol and control functions performed for the purpose of detecting and apprehending persons suspected of violating criminal laws;

(3) Employees in positions properly classified in the U.S. Marshal series;

(4) Employees in positions properly classified in the Criminal Investigating series, and other employees performing criminal investigation as their primary duty, except as provided for in § 551.213 (Exemption of employees receiving availability pay);

(5) Employees in positions properly classified in the Correctional Officer series, Guard series, or other series, whose primary duty is to maintain custody of inmates of a correctional institution; and

(6) Employees on rescue and ambulance crews that provide the primary service in connection with law enforcement functions, provided that crew members have received intensive training in specialized rescue and first aid procedures applicable to law enforcement emergencies (e.g., gunshot wounds, riot and accident victims) and the crew responds to actual or potential law enforcement emergencies on a regular and recurring basis.

(d) *Not engaged in law enforcement activities.* The following employees are not engaged in law enforcement activities for the purpose of pay under section 7(k) of the Act as provided for in § 551.501(a)(1) and (5) and § 551.541:

(1) Employees whose primary duties concern the protection of Government property from hazards such as sabotage, espionage, theft, fire, or accidental or willful damage and in so doing, control the movement of persons and protect the lives and property of persons on Government property (e.g., guards or other employees performing similar functions);

(2) Employees who perform work concerned with the determination of the applicability of or compliance with laws and regulations when the duties primarily involve:

(i) Examining or inspecting products, premises, property, or papers of persons or firms to enforce or obtain compliance with laws and regulations (e.g., immigration and customs examining or inspecting; mine safety and health examining or inspecting; alcohol, tobacco and firearms examining or inspecting; plant protection and quarantine examining or inspecting); or

(ii) Planning and conducting investigations covering the character, practices, suitability or qualifications of persons or organizations seeking, claiming or receiving Federal benefits, permits, or employment (e.g., general investigations work);

(3) Employees who work within correctional institutions but who do not have direct custody and safeguarding of inmates as their primary duty; and

(4) Members of rescue or ambulance crews that provide those services in connection with law enforcement activities only in unusual situations (e.g., when the primary crews are unavailable or when an emergency situation requires more crews than can be provided by the primary service).

■ 4. Amend § 551.541 of subpart E by revising paragraphs (a) and (b) to read as follows:

Subpart E—Overtime Pay Provisions

§ 551.541 Employees engaged in fire protection activities or law enforcement activities.

(a) An employee engaged in fire protection activities or law enforcement activities (as described in §§ 551.215 and 551.216, respectively) who receives compensation for those activities under 5 U.S.C. 5545(c)(1) or (2) or 5545b, or does not meet the definition of ''employee'' in 5 U.S.C. 5541(2) for the purposes of 5 U.S.C. 5542, 5543, and 5544, is subject to section 7(k) of the Act and this section. (See § 551.501(a)(1) and (5)). Such an employee shall be paid at a rate equal to one and one-half times the employee's hourly regular rate of pay for those hours in a tour of duty which exceed the overtime standard for a work period specified in section 7(k) of the Act.

(b) The tour of duty of an employee covered by paragraph (a) of this section shall include all time the employee is on duty. Meal periods and sleep periods are included in the tour of duty except as otherwise provided in §§ 551.411(c) and 551.432(b).

* * * * *

■ 5. Add paragraph (c) to § 551.601 to read as follows:

Subpart F—Child Labor

§ 551.601 Minimum age standards.

* * * * *

(c) All work in fire suppression is deemed hazardous for the employment of individuals under 18 years of age. All work in fire protection and prevention is particularly hazardous for the employment of individuals between 16 and 18 years of age, except the following:

(1) Work in offices or in repair or maintenance shops without exposure to hazardous materials;

(2) Work in the construction, operation, repair, or maintenance of living and administrative quarters in firefighting camps without exposure to hazardous materials;

(3) Work in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining firefighting equipment, or acting as fire lookout or fire patrolman away from the actual logging operations, provided that this provision shall not apply to the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles;

(4) Work in the clean-up service outside of a structure after a fire has been declared by the fire official in charge to be under control; and

(5) Work assisting in the administration of first aid.

■ 6. Revise subpart G to read as follows:

Subpart G—FLSA Claims and Compliance

Sec.
551.701 Applicability.
551.702 Time limits.
551.703 Avenues of review.
551.704 Claimant's representative.
551.705 Filing an FLSA claim.
551.706 Responsibilities.
551.707 Withdrawal or cancellation of an FLSA claim.
551.708 Finality and effect of OPM FLSA claim decision.
551.709 Availability of information.
551.710 Where to file an FLSA claim with OPM.

Subpart G—FLSA Claims and Compliance

§ 551.701 Applicability.

(a) *Applicable.* This subpart applies to *FLSA exemption status determination claims,* FLSA pay claims for minimum wage or overtime pay for work performed under the Act, and complaints arising under the child labor provisions of the Act.

(b) *Not applicable.* This subpart does not apply to claims or complaints arising under the equal pay provisions of the Act. The equal pay provisions of the Act are administered by the Equal Employment Opportunity Commission.

§ 551.702 Time limits.

(a) *Claims.* A claimant may at any time file a complaint under the child labor provisions of the Act or an FLSA claim challenging the correctness of his or her FLSA exemption status determination. A claimant may also file an FLSA claim concerning his or her entitlement to minimum wage or overtime pay for work performed under the Act; however, time limits apply to FLSA pay claims. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations (3 years for willful violations).

(b) *Statute of limitations.* An FLSA pay claim filed on or after June 30, 1994, is subject to the statute of limitations contained in the Portal-to-Portal Act of 1947, as amended (section 255a of title 29, United States Code), which imposes a 2-year statute of limitations, except in cases of a willful violation where the statute of limitations is 3 years. In deciding a claim, a determination must be made as to whether the cause or basis of the claim was the result of a willful violation on the part of the agency.

(c) *Preserving the claim period.* A claimant or a claimant's designated representative may preserve the claim period by submitting a written claim either to the agency employing the claimant during the claim period or to OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay. The claimant is responsible for proving when the claim was received by the agency or OPM and for retaining documentation to establish when the claim was received by the agency or OPM, such as by filing the claim using certified, return receipt mail, or by requesting that the agency or OPM provide written acknowledgment of receipt of the claim. If a claim for back pay is established, the claimant will be entitled to pay for a period of up to 2 years (3 years for a willful violation) back from the date the claim was received.

§ 551.703 Avenues of review.

(a) *Negotiated grievance procedure (NGP) as exclusive administrative remedy.* If at any time during the claim period, a claimant was a member of a bargaining unit covered by a collective bargaining agreement that did not specifically exclude matters under the Act from the scope of the NGP, the claimant must use that NGP as the exclusive administrative remedy for all claims under the Act. There is no right to further administrative review by the agency or by OPM. The remaining sections in this subpart (that is, §§ 551.704 through 551.710) do not apply to such employees.

(b) *Non-NGP administrative review by agency or OPM.* A claimant may file a claim with the agency employing the claimant during the claim period or with OPM, but not both simultaneously, regarding matters arising under the Act if, during the entire claim period, the claimant:

(1) Was not a member of a bargaining unit, or

(2) Was a member of a bargaining unit not covered by a collective bargaining agreement, or

(3) Was a member of a bargaining unit covered by a collective bargaining agreement that specifically excluded matters under the Act from the scope of the NGP.

(c) *Judicial review.* Nothing in this subpart limits the right of a claimant to bring an action in an appropriate United States court. Filing a claim with an agency or with OPM does not satisfy the statute of limitations governing FLSA claims filed in court. OPM will not decide an FLSA claim that is in litigation.

§ 551.704 Claimant's representative.

A claimant may designate a representative to assist in preparing or presenting a claim. The claimant must designate the representative in writing. A representative may not participate in OPM interviews unless specifically requested to do so by OPM. An agency may disallow a claimant's representative who is a Federal employee in any of the following circumstances:

(a) When the individual's activities as a representative would cause a conflict of interest or position;

(b) When the designated representative cannot be released from his or her official duties because of the priority needs of the Government; or

(c) When the release of the designated representative would give rise to unreasonable costs to the Government.

§ 551.705 Filing an FLSA claim.

(a) *Filing an FLSA claim.* A claimant may file an FLSA claim with either the agency employing the claimant during the claim period or with OPM, but a claimant cannot pursue the same claim with both at the same time. OPM encourages a claimant to obtain a decision on the claim from the agency before filing the claim with OPM. However, this is a matter of personal discretion and a claimant is not required to do this; a claimant may use either avenue. A claimant who receives an unfavorable decision on a claim from the agency may still file the claim with OPM. However, a claimant may not file the claim with the agency after receiving an unfavorable decision from OPM. An OPM decision on a claim is final and is not subject to further administrative review.

(b) *FLSA claim filed with agency.* An FLSA claim filed with an agency should be made according to appropriate agency procedures. At the request of the claimant, the agency may forward the claim to OPM on the claimant's behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (c) of this section.

(c) *FLSA claim filed with OPM.* An FLSA claim filed with OPM must be made in writing and must be signed by the claimant or the claimant's representative. Relevant information may be submitted to OPM at any time following the initial submission of a claim to OPM and prior to OPM's decision on the claim. The claim must include the following:

(1) The identity of the claimant (see § 551.706(a)(2) regarding requesting confidentiality) and any designated representative, the agency employing

the claimant during the claim period, the position (job title, series, and grade, or equivalent level) occupied by the claimant during the claim period, and the current mailing address, commercial telephone number, and facsimile machine number, if available, of the claimant and any designated representative;

(2) A description of the nature of the claim and the specific issues or incidents giving rise to the claim, including the time period covered by the claim;

(3) A description of actions taken by the claimant to resolve the claim within the agency and the results of any actions taken;

(4) A copy of any relevant decision or written response by the agency;

(5) Evidence available to the claimant or the claimant's designated representative which supports the claim, including the identity, commercial telephone number, and location of other individuals who may be able to provide information relating to the claim;

(6) The remedy sought by the claimant;

(7) Evidence, if available, that the claim period was preserved in accordance with § 551.702. The date the claim is received by the agency or OPM becomes the date on which the claim period is preserved;

(8) A statement from the claimant that he or she was or was not a member of a collective bargaining unit at any time during the claim period;

(9) If the claimant was a member of a bargaining unit, a statement from the claimant that he or she was or was not covered by a negotiated grievance procedure at any time during the claim period, and if covered, whether that procedure specifically excluded the claim from the scope of the negotiated grievance procedure;

(10) A statement from the claimant that he or she has or has not filed an action in an appropriate United States court; and

(11) Any other information that the claimant believes OPM should consider.

§ 551.706 Responsibilities.

(a) *Claimant*—(1) *Providing information to OPM.* For all FLSA claims, the claimant or claimant's designated representative must provide any additional information requested by OPM within 15 workdays after the date of the request, unless the claimant or the claimant's representative requests additional time and OPM grants a longer period of time in which to provide the requested information. The disclosure of information by a claimant is voluntary. However, OPM may be unable to render a decision on a claim without the information requested. In such a case, the claim will be cancelled without further action being taken by OPM. In the case of an FLSA pay claim, it is the claimant's responsibility to provide evidence that the claim period was preserved in accordance with § 551.702 and of the liability of the agency and the claimant's right to payment.

(2) *Requesting confidentiality.* If the claimant wishes the claim to be treated confidentially, the claim must specifically request that the identity of the claimant not be revealed to the agency. Witnesses or other sources may also request confidentiality. OPM will make every effort to conduct its investigation in a way to maintain confidentiality. If OPM is unable to obtain sufficient information to render a decision and preserve the requested confidentiality, OPM will notify the claimant that the claim will be cancelled with no further action by OPM unless the claimant voluntarily provides written authorization for his or her name to be revealed.

(b) *Agency.* (1) In *FLSA exemption status determination claims,* the burden of proof rests with the agency that asserts the FLSA exemption.

(2) The agency must provide the claimant with a written acknowledgment of the date the claim was received.

(3) Upon a claimant's request, and subject to any Privacy Act requirements, an agency must provide a claimant with information relevant to the claim.

(4) The agency must provide any information requested by OPM within 15 workdays after the date of the request, unless the agency requests additional time and OPM grants a longer period of time in which to provide the requested information.

§ 551.707 Withdrawal or cancellation of an FLSA claim.

(a) *Withdrawal.* OPM may grant a request from the claimant or claimant's representative to withdraw an FLSA claim at any time before OPM issues its decision. The claimant or the claimant's representative must submit the request in writing to OPM.

(b) *Cancellation.* OPM may, at its discretion, cancel an FLSA claim if the claimant or the claimant's representative fails to provide requested information within 15 workdays after the date of the request, unless the claimant or the claimant's representative requests additional time and OPM grants a longer period of time in which to provide the requested information. OPM may, at its discretion, reconsider a cancelled claim on a showing that circumstances beyond the claimant's control prevented pursuit of the claim.

§ 551.708 Finality and effect of OPM FLSA claim decision.

(a) OPM will send an FLSA claim decision to the claimant or the claimant's representative and the agency. An FLSA claim decision made by OPM is final. There is no further right of administrative appeal. However, at its discretion, OPM may reconsider its FLSA claim decision when material information was not considered or there was a material error of law, regulation, or fact in the original decision. The request must be submitted in writing and received by OPM within 45 calendar days after the date of the decision. At its unreviewable discretion, OPM may waive the time limit.

(b) A decision by OPM under the Act is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers the Act.

(c)(1) Upon receipt of a decision, the agency employing the claimant during the claim period must take all necessary steps to comply with the decision, including adherence to compliance instructions provided with the decision. All compliance actions must be completed within the time specified in the decision, unless an extension of time is requested by the agency and granted by OPM.

(2) The agency should identify all similarly situated current and former employees to ensure that they are treated in a manner consistent with the decision on FLSA coverage, informing them in writing of their right to file an FLSA claim with the agency or OPM.

§ 551.709 Availability of information.

(a) Except when the claimant has requested confidentiality, the agency and the claimant must provide to each other a copy of all information submitted with respect to the claim.

(b) When a claimant has not requested confidentiality, OPM will disclose to the parties concerned the information contained in an FLSA claim file. When a claimant has requested confidentiality, OPM will delete any information identifying the claimant before disclosing the information in an FLSA claim file to the parties concerned. For the purposes of this subpart, ''the parties concerned'' means the claimant, any representative designated in writing, and any representative of the agency or OPM involved in the proceeding.

(c) Except when the claimant has requested confidentiality or the disclosure would constitute a clearly unwarranted invasion of personal privacy, OPM, upon a request which identifies the individual from whose file the information is sought, will disclose the following information from a claim file to a member of the public:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The remedy sought;

(3) The status of the claim;

(4) The decision on the claim; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

§ 551.710 Where to file an FLSA claim with OPM.

An FLSA claim must be filed with the OPM Classification Appeals and FLSA Program, 1900 E Street, NW., Washington, DC 20415–0001.

[FR Doc. E7–18027 Filed 9–14–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS–2007–0061]

RIN 0579–AC40

Importation of Blueberries From South Africa, Uruguay, and Argentina With Cold Treatment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing the importation into the continental United States of fresh blueberries from South Africa and Uruguay under certain conditions. As a condition of entry, the blueberries will have to undergo cold treatment and will have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country. This action will allow for the importation of blueberries from South Africa and Uruguay into the continental United States while continuing to provide protection against the introduction of quarantine pests. In addition, we are allowing the use of cold treatment for blueberries imported into the United States from Argentina. This action provides an alternative to the methyl bromide treatment that is currently required for blueberries imported from Argentina.

EFFECTIVE DATE: September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Import Specialist, Commodity Import Analysis and Operation Staff, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–47, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On June 5, 2007, we published in the **Federal Register** (72 FR 30979–30984, Docket No. APHIS 2007–0061) a proposal [1] to amend the regulations to allow the importation into the continental United States of fresh blueberries from South Africa and Uruguay under certain conditions. As a condition of entry, we proposed that the blueberries would have to undergo cold treatment and would have to be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of the exporting country. In addition, we proposed to allow the use of cold treatment for blueberries imported into the United States from Argentina.

We solicited comments concerning our proposal for 45 days ending July 20, 2007. We received six comments by that date. They were from blueberry distributors, a commercial fumigation company, and a blueberry industry group. Four of the commenters supported the proposed rule. One commenter did not address the proposed rule.

One commenter objected to the proposed rule. The commenter expressed concern that we did not consult with domestic blueberry producers prior to issuing the proposal and that the studies conducted in support of the rule were conducted hastily. Because the proposed rule and its supporting risk analysis were focused on identifying and managing the risks associated with importing blueberries from Uruguay and South Africa, we did not find it necessary to consult with the domestic blueberry industry during the preparation of those documents. The risk assessment and risk management documents were drafted using the same approach and in the same timeframe as the other risk analyses the Animal and Plant Health Inspection Service (APHIS) prepares or reviews. In addition, we offered the public, including domestic blueberry producers, the opportunity to comment on the proposed rule following its publication in the **Federal Register**.

The commenter further stated that information in the proposed rule regarding domestic production is out of date and incorrect, and suggested that we refer to information released by the North American Blueberry Council (NABC). The data we used in the proposed rule's economic analysis was taken from the National Agricultural Statistics Service (NASS) and the Economic Research Service (ERS), with the ERS report cited being the most current data available (May 2007). The data we received incorporates information from a variety of sources, including the NABC.

Finally, the commenter expressed concern regarding the lack of market access for U.S.-grown blueberries into Uruguay and South Korea. This is not germane to the proposal.

Note: In a final rule published in the **Federal Register** on July 18, 2007 (72 FR 39482-39528, Docket No. APHIS–2005–0106), we revised the fruits and vegetables regulations to establish a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in § 319.56–4(b) of the regulations. Under those revised regulations, commodities that are authorized for importation subject only to one or more designated measures will be listed in the fruits and vegetables manual [2] rather than being listed in the regulations. The requirements that will apply to the importation of blueberries from Uruguay and South Africa—i.e., that they be cold treated for specific pests, accompanied by a phytosanitary certificate, and imported in commercial consignments only—are all designated phytosanitary measures listed in § 319.56–4(b). Therefore, we are not adding the provisions regarding the entry of blueberries from Uruguay and South Africa to the fruits and vegetables regulations in part 319 in this final rule; rather, those conditions will be listed in the fruits and vegetables manual. For those same reasons, the provisions regarding the importation of blueberries from Argentina were removed from the regulations in the July 2007 final

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0061.*

[2] The fruits and vegetables manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf.*

rule and placed in the fruits and vegetables manual.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

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 allowing the importation into the continental United States of fresh blueberries from South Africa and Uruguay under certain conditions. As a condition of entry, the blueberries will have to undergo cold treatment and will have to be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country. This action allows for the importation of blueberries from South Africa and Uruguay into the continental United States while continuing to provide protection against the introduction of quarantine pests. In addition, we are allowing the use of cold treatment for blueberries imported into the United States from Argentina. This action will provide an alternative to the currently approved methyl bromide treatment.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. In accordance with section 604 of the RFA, we have prepared a final regulatory flexibility analysis describing the expected impact of the changes in this rule on small entities. During the comment period for our proposed rule, we received one comment pertaining to the initial regulatory flexibility analysis presented in that document. The commenter stated that information in the proposed rule regarding domestic blueberry production is out of date and incorrect and suggested that we refer to information released by NABC. The data we used in the proposed rule's economic analysis was from NASS and ERS, with the ERS report cited being the most current data available (May 2007). The data we received from NASS incorporates information from a variety of sources, including NABC.

The United States is the largest producer of blueberries, supplying more than half the world's production (55 percent). Canada follows with 28 percent of world supplies and Poland comes third with 10 percent of the world's blueberry fruit production.

Michigan, Maine, and New Jersey are the leading States in U.S. blueberry production. Combined, these three States produce more than half of all U.S. blueberries (table 1). Nine States account for 98 percent of U.S. production. Fresh blueberries require harvesting by hand, whereas blueberries destined for processing can be machine-harvested. The cost of farm labor is considerably higher in the United States than in many other countries.

TABLE 1.—U.S. PRODUCTION AND VALUE OF BLUEBERRIES FOR THE FRESH MARKET IN 2005 AND FARM ACREAGE IN 2002 BY MAJOR STATES

State	2005		2002	
	(metric tons)	(million dollars)	Number of acres	Number of farms
Michigan	29,937.1	$83.5	17,274	590
Maine	26,988.7	39.0	293	116
New Jersey	20,411.7	55.5	7,468	240
Oregon	15,648.9	33.3	3,887	659
North Carolina	11,793.4	36.7	5,009	267
Georgia	11,793.5	31.8	4,451	408
Washington	8,890.4	19.2	2,569	289
California	4,127.7	40.6	827	97
Florida	2,358.7	32.8	1,646	343
Sum	131,950 (98%)	372.3 (98%)	43,424 (84%)	3,009 (47%)
Rest of United States	3,070.9	9.1	8,578	3,419
United States total	135,021.0	381.4	52,002	6,428

Sources: USDA/NASS New England, Oregon, and Washington field offices; North American Blueberry Council; Table 33—Berries Harvested for Sale, 2002 U.S. Census of Agriculture by State, pp. 496–497, USDA/NASS; and Table D–2. Blueberries: Commercial Acreage, Production, and Value, Fruit and Tree Nuts Situation and Outlook Yearbook, May 2007, USDA/ERS.

In 2005, the United States produced 135,021 metric tons of highbush blueberries destined for the fresh market, valued at $381 million. In the United States, highbush blueberries are harvested from April to early October with the majority of the blueberries picked from mid-June to mid-August.

Between 1995 and 2005, total U.S. blueberry consumption increased by 47 percent, from 13 ounces to 20 ounces per person. Most of the increase has been in the fresh market with a doubling in fresh consumption, from 4.3 ounces per person in 1995 to 8.7 ounces in 2005.

Table 2 shows U.S. imports and exports of fresh blueberries for the past 3 years. The United States is a net importer, and our major foreign supplier of fresh blueberries (by value) is Canada. Annual U.S. imports of fresh blueberries averaged 29,469 metric tons between 2004 and 2006.

TABLE 2.—U.S. IMPORTS AND EXPORTS OF FRESH BLUEBERRIES, 2004–2006

Year	U.S. imports	U.S. exports	Net imports
	(million dollars)		
2004	$91.03	$29.40	$61.63
2005	109.82	45.60	64.22
2006	155.14	55.70	99.44
	(metric tons)		
2004	28,887.30	15,183.80	13,693.50
2005	26,335.70	22,588.90	3,746.80
2006	32,601.50	22,952.30	9,649.20

Source: U.S. Dept. of Commerce, Bureau of Census, as reported by Global Trade Information Services.
Note: Based on the Harmonized Schedules 0810400028 and 0810400024.

Argentina has supplied about 3 percent of the U.S. imports of fresh blueberries, or 880 metric tons, over the last 3 years. In 2006, Argentina reported 4,000 acres of land devoted to blueberry production, a 35 percent increase since 2003.

The Uruguayan Government Statistics office indicates that Uruguay started producing blueberries in 2003, with 65 metric tons harvested that year. In the following 3 years, Uruguay produced 80, 120, and 200 metric tons, respectively. For 2007 through 2009, crop volumes of around 500, 1,200, and 2,000 metric tons are forecast.

The Government of Uruguay has indicated its intention to export between 200 and 1,200 metric tons of fresh blueberries annually for the next 3 years starting in 2007, with 200 metric tons shipped annually to the continental United States (an amount that exceeds Uruguay's total exports of fresh blueberries in recent years).[3] Even if this export target were met, imports from Uruguay will represent less than 1 percent of U.S. imports of fresh blueberries in 2006.

Uruguay's main export season for fresh blueberries is between November and April. During this season, the supply of fresh blueberries by U.S. producers is limited. Fresh blueberries are generally harvested in the United States by early May through the beginning of September. U.S. domestic shipments of fresh blueberries reach their highest volume between late June and mid-August.

APHIS does not have data on South African production of blueberry fruits (*Vaccinium* spp.). Foreign Agricultural Service statistics indicate that South Africa exported an annual average of 75 metric tons of *Vaccinium* spp. between 2000 and 2004. Specifically, in 2000 the Republic of South Africa exported 3 metric tons, then in the following 4 years, 90, 83, 86, and 109 metric tons, respectively. In sum, the quantities of fresh blueberry expected to be imported into the United States from Uruguay and the Republic of South Africa are small, representing less than 1 percent of U.S. imports and less than one-tenth of 1 percent of the United States' domestic supply (production plus imports minus exports). Moreover, blueberry production in these two countries takes place during our winter months; their blueberry shipments to the United States would largely compete with blueberry imports from other countries. We do not expect the changes we are making to have a significant economic impact on U.S. entities. U.S. entities that could be affected by the changes are domestic producers of fresh blueberries and wholesalers that import fresh blueberries. Businesses producing fresh blueberries are classified in the North American Industry Classification System (NAICS) within the category of Other Vegetable (except Potato) and Melon Farming (NAICS code 111219). The Small Business Administration's small-entity definition for these producers is annual receipts of not more than $750,000. Firms that will import fresh blueberry fruits from Uruguay and the Republic of South Africa are defined as small entities if they have 100 or fewer employees (NAICS code 424480, Fresh Fruit and Vegetable Merchant Wholesalers).[4]

In general, firms engaged in production or importation of agricultural commodities are predominantly small. We believe that most if not all of the businesses affected by this rule would be small.

We do not know the exact number of U.S. producers of fresh blueberries. According to the 2002 Census of Agriculture for the States where blueberries are produced, there were at least 6,428 farms growing blueberries in 52,000 acres of land (table 1). The majority of these farms (84 percent) are located in nine States. We do not know the percentage of blueberry farms that produce blueberries for the fresh market. Also, we do not know their size, but in general, such entities are predominantly small. The United States Census does not report sales receipts by farm or any other unit. The average farm size in these nine States is 15 acres, whereas the average farm size in the remainder of States that grow blueberries is 2.5 acres. However, as stated above, we do not expect this rulemaking to have a significant economic impact on U.S. entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

We are allowing fresh blueberries to be imported into the United States from South Africa and Uruguay. State and local laws and regulations regarding imported fresh blueberries will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in

[3] Uruguay started exporting fresh blueberries in 2003, with an amount of 250 kilograms or 0.4 metric ton. The following 3 years, 2004–2006, Uruguay exported 3.8, 18.7 and 94.2 metric tons, respectively. Source: Uruguayan Government, Ines Ares (personal communication).

[4] The wholesale sector comprises two types of wholesalers: Those that sell goods on their own account and those that arrange sales and purchases for others for a commission or fee. Importers are included in both cases.

other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0321.

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 rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR part 305 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for 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.

■ 2. In § 305.2, the table in paragraph (h)(2)(i) is amended as follows:

■ a. Under Argentina, by revising the entry for ''Blueberry'' to read as set forth below.

■ b. Under South Africa, by removing the entry for ''Apple, grape, pear'' and adding a new entry for ''Apple, blueberry, grape, pear'' in its place to read as set forth below.

■ c. In the entry for Uruguay, by adding an entry for ''Blueberry'' to read as set forth below.

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule
*	*	*	*
Argentina			
*	*	*	*
	Blueberry	*Anastrepha fraterculus, Ceratitis capitata*	CT T107–a–1 or MB T101–i–1–1.
*	*	*	*
South Africa	Apple, blueberry, grape, pear	*Ceratitis capitata*	CT T107–a.
*	*	*	*
Uruguay			
*	*	*	*
	Blueberry	*Anastrepha fraterculus, Ceratitis capitata.*	CT T107–a–1.
*	*	*	*

* * * * *

Done in Washington, DC, this 12th day of September 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–18276 Filed 9–14–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1739

RIN 0572–AC09

Community Connect Broadband Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or the Agency, gives notice that no adverse comments were received regarding the direct final rule amending its regulations to update the eligibility criteria for the Community Connect Broadband Grant Program (Community Connect Grant Program) requirements of the Agency, and confirms the effective date of the direct final rule.

DATES: The direct final rule published in the **Federal Register** on August 3, 2007 (72 FR 43132), will be effective on September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Kenneth Kuchno, Director, Broadband Division, USDA Rural Development, 1400 Independence Avenue, SW., STOP 1599, Washington, DC 20250–1599. Telephone: (202) 690–4673. Fax: (202) 690–4389. E-mail Address: *Kenneth.kuchno@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The USDA Rural Development Utilities Programs (the Agency) improves the quality of life in rural America by providing investment capital, in the form of loans and grants, for the deployment of rural telecommunications infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. In order to achieve the goal of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nation-wide

telecommunications network. With access to the same advanced telecommunications networks of its urban counterparts, especially broadband networks designed to accommodate distance learning, telework and telemedicine, rural America will see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. Of particular concern to the Agency are communities where broadband service is not available and where population densities are such that the cost of deployment to them is high and build-out of infrastructure is unlikely. The Agency is committed to ensuring rural communities will have access to affordable, reliable, advanced communications services, comparable to those available throughout the rest of the United States, to provide a healthy, safe and prosperous place to live and work. The Community Connect Grant Program was started as a Pilot Program with the Fiscal Year 2002 budget and has been funded ever since through the appropriations process. After administering the program as a pilot program for two years, the Agency proposed rules for the program, and on July 28, 2004, the current rules were published, and the program was formally implemented. Since then more than 670 requests for grant funds totaling over $410 million were requested through Fiscal Year 2006. Of those requests, 129 were granted for $57 million to bring broadband service to 129 communities in 26 states and Puerto Rico. While the Agency is proud of the results achieved in the Community Connect Grant Program thus far, it believes that the overall effectiveness of the program can be improved by modifying the existing rules. Through these changes, the Agency is increasing eligibility criteria to include communities that clearly meet the intent of the program. Specifically, this rule will: (1) Add the Rand McNally Atlas as a community locator; (2) change the income measure for eligibility from a national comparison to a state comparison; and (3) clarify the items that are eligible to be considered as operating expenses.

Confirmation of Effective Date

This is to confirm the effective date of September 17, 2007, for the direct final rule 7 CFR 1739, Community Connect Grant Program, published in the **Federal Register** on August 3, 2007.

Dated: September 11, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E7–18272 Filed 9–14–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 103, 178, and 181

[USCBP–2006–0090; CBP Dec. 07–76]

RIN 1505–AB58

NAFTA: Merchandise Processing Fee Exemption and Technical Corrections

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to clarify that, in order to claim the exemption from the merchandise processing fee (MPF) for merchandise that is considered ''originating'' and qualifies to be marked as products of Canada or Mexico under the provisions of the NAFTA, an importer is subject to the same declaration requirement that is established for obtaining NAFTA duty preference, even if the merchandise is unconditionally free. In addition, this document amends the regulations to clarify that a Certificate of Origin is not required for a commercial importation for which the total value of originating goods does not exceed $2,500. Lastly, this document remedies two incorrect addresses and an incorrect Code of Federal Regulations citation, and incorporates non-substantive amendments to certain sections in the regulations to reflect the nomenclature changes effected by the transfer of CBP to the Department of Homeland Security and the reorganization of certain offices in CBP pursuant to the ''Security and Accountability for Every Port Act of 2006'' (or the ''Safe Port Act''), as well as certain other minor editorial changes.

DATES: *Effective Date:* The amendments set forth in this document are effective on October 17, 2007.

FOR FURTHER INFORMATION CONTACT: Seth Mazze, Trade Agreements Branch, Office of International Trade, (202) 344–2634.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada, and Mexico entered into the North American Free-Trade Agreement (NAFTA). The stated objectives of the NAFTA include the elimination of barriers to trade in, and the facilitation of the cross-border movement of, goods and services between the territories of the countries. The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act (the ''Act'', 19 U.S.C. 3301–3473). On September 6, 1995, U.S. Customs and Border Protection (CBP) published Treasury Decision (T.D.) 95–68 (North American Free Trade Agreement) in the **Federal Register** (60 FR 46333), adopting amendments to the regulations in title 19 of the Code of Federal Regulations (CFR) in order to implement customs-related aspects of the NAFTA. The final rule went into effect on October 1, 1995.

Pursuant to sections 403(1) and 411 of the Homeland Security Act of 2002, Pub. L. 107–296 (the ''HSA''), the United States Customs Service and certain of its functions were transferred from the Department of the Treasury to the Department of Homeland Security effective March 1, 2003. In addition, pursuant to section 1502 of the HSA, the ''Customs Service'' was renamed as the ''Bureau of Customs and Border Protection.'' Subsequently, on April 23, 2007, a Notice was published in the **Federal Register** (72 FR 20131) to inform the public that the name of the Bureau of Customs and Border Protection had been changed by the Department of Homeland Security to ''U.S. Customs and Border Protection (CBP)'', effective March 31, 2007.

On August 23, 2006, a Notice of Proposed Rulemaking was published in the **Federal Register** (71 FR 49391; the NPRM) by CBP that proposed to amend the regulations to clarify the requirements for claiming the merchandise processing fee (MPF) under the NAFTA and to effect several technical changes, as set forth below.

Merchandise Processing Fee (MPF) Exemption

As a means of recouping administrative expenses for the processing of imported shipments, CBP charges a MPF, as provided for in 19 U.S.C. 58c. However, under 19 U.S.C. 58c(b)(10)(B), for goods qualifying under the rules of origin set out in 19 U.S.C. 3332, the fee may not be charged with respect to goods that qualify to be marked as goods of Canada or of Mexico

(pursuant to Annex 311 of the NAFTA). In order to make a claim for NAFTA duty preference, an importer must make a declaration. The same declaration is also used for purposes of claiming the MPF exemption. That is, the importer must place the appropriate special program indicator (e.g., ''CA'' for goods of Canada and ''MX'' for goods of Mexico) opposite the good on the entry form, or in the appropriate location in an electronic filing.

The NPRM addressed situations in which an importer of an originating good does not have a duty preference incentive to make the required NAFTA declaration upon entry because the Normal Trade Relations rate of duty on the good is free (i.e., the good is unconditionally duty free). Consistent with existing law and practice, the NPRM proposed to amend 19 CFR 181.21(a) to clarify that in order to claim the MPF exemption for unconditionally free goods from a NAFTA country, an importer of an originating good must place the appropriate special program indicator opposite the good on the entry form even if the importer is not actually claiming NAFTA preference for duty purposes.

Exemption From Providing Certificate of Origin

Section 181.22(b) of title 19, CFR (19 CFR 181.22(b)), requires an importer who claims preferential tariff treatment on a good under 19 CFR 181.21 to provide, at the request of the port director, a copy of each Certificate of Origin pertaining to the good which is in the possession of the importer. However, certain importations are exempted from this requirement under 19 CFR 181.22(d). One of these exemptions, set forth in § 181.22(d)(1)(iii), is for a commercial importation of a good whose value does not exceed $2,500, as long as a signed statement is attached to the invoice or other documents accompanying the shipment.

In the NPRM, CBP proposed to amend the regulations to clarify that the $2,500 value refers to the total value of a shipment and not to the value of the individual goods in a shipment. In this regard, CBP specifically proposed to amend 19 CFR 181.22(d)(1)(iii) in order to clarify that a Certificate of Origin is not required for a commercial importation consisting of originating goods, the total value of which does not exceed $2,500, if the required statement is attached.

Other Technical Corrections

In the NPRM, CBP also proposed to make several other technical corrections to the regulations. In CBP Dec. 05–32, an Interim Rule published in the **Federal Register** (70 FR 58009) on October 5, 2005, CBP redesignated 19 CFR 12.132 as § 102.25. However, there is a reference to § 12.132 in § 181.21(a). Accordingly, CBP proposed to make a minor conforming amendment to update this reference. In addition, because CBP Dec. 05–32 removed the declaration requirement referenced in §§ 12.130(c) and 12.132, CBP proposed to remove the entries for these sections in the list of OMB control numbers in § 178.2. CBP also proposed to amend an incorrect citation to 19 CFR 181.72(a)(2)(iii) in 19 CFR 181.74(a). The correct citation is to § 181.72(a)(3)(iii). In addition, CBP proposed to amend the address in 19 CFR 181.74(e) for providing notification when the Canadian or Mexican customs administrations intend to conduct a NAFTA verification visit in the United States in order to determine whether a good imported into the United States qualifies as an originating good. Since the publication of the NPRM on August 23, 2006, some divisions, functions, and personnel from the Office of Field Operations were transferred by the Commissioner of CBP into the Office of International Trade pursuant to the authority under section 402 of the Safe Port Act (Pub. L. 109–347) (October 13, 2006). The correct address is: ''U.S. Customs and Border Protection, Office of International Trade, Commercial Targeting and Enforcement, 1300 Pennsylvania Ave. NW., Washington, DC 20229.'' CBP also proposed to amend the National Commodity Specialist Division (NCSD) address in 19 CFR 181.93(a) for purposes of submitting advance ruling requests under the NAFTA. The correct address is: ''National Commodity Specialist Division, U.S. Customs and Border Protection, One Penn Plaza, 10th Floor, New York, NY 10119.'' This address is also corrected in the list of public reading rooms in 19 CFR 103.1. In addition, CBP is expanding the declaration and other documentation on a claim for preferential treatment in § 181.21 to include electronic versions of such documents in CBP's continuing effort to modernize its procedures under the authority granted by Customs Modernization provisions in the North American Free Trade Agreement Implementation Act (commonly referred to as the ''Customs Mod Act''), Pub. L. 103–182, 107 Stat. 2057, 2170 (December 8, 1993).

Comments were solicited on the Notice of Proposed Rulemaking. The comment period closed on October 23, 2006.

Discussion of Comments

One comment was received in response to the solicitation and a description of the comment received and CBP's analysis are set forth below.

Comment

The commenter, a Canadian manufacturer, stated that changing the MPF requirements would only increase the costs associated with importing goods into the United States and result in delays during importation. The commenter further noted that additional documentary requirements would increase administrative costs for CBP as well as for importers and brokers, and would ultimately result in less money being recouped. In addition, the commenter suggested that fees should be based strictly on the country of origin as declared and that routine audits and requests for information should be relied upon to monitor importers that do not follow the guidelines.

CBP's Response

CBP is not changing the requirements for claiming the MPF exemption. Rather, consistent with existing law and practice, CBP is merely clarifying that an importer is subject to the same declaration requirement that is established for claiming NAFTA duty preference in order to claim the exemption of the MPF for goods that are eligible for preferential duty treatment under the NAFTA. As a clarification of existing law and practice, CBP believes that the amended regulation will serve to facilitate entry by providing certainty under the stated circumstances and will not result in either increased costs or delays during importation. With respect to the commenter's suggestion that the MPF should be based strictly on the country of origin of imported merchandise, it is CBP's position that this approach is not consistent with existing statutory law and is outside the scope of this rulemaking.

No comments were received regarding the other amendments proposed in the NPRM.

Conclusion

After review of the comment and further consideration, CBP has decided to adopt the proposed rule published on August 23, 2006, without substantive changes, but with the additional modifications set forth below.

Additional Changes to the Regulations

The final regulations incorporate non-substantive amendments to §§ 181.21, 181.22, 181.74, and 181.93 of the CFR to reflect the nomenclature changes effected by the transfer of CBP to the

Department of Homeland Security and the subsequent change of name in the **Federal Register** notice of April 23, 2007. As discussed above, the final regulation also reflects the reorganization of CBP by the Safe Port Act with the creation of the new Office of International Trade by updating the address and new office in 19 CFR 181.74(e). In addition, the language of § 181.21(a) has been edited to replace ''shall'' with ''must.'' In an effort to reflect the modernization of procedures under the Customs Mod Act, § 181.21(a) has also been edited by replacing the reference to ''written declaration'' with reference to ''formal declaration'' and a reference to ''electronic submissions'' has been added to the second sentence.

Executive Order 12866 and Regulatory Flexibility Act

This rule is not considered to be a significant regulatory action under Executive Order 12866. Accordingly, a regulatory assessment is not required.

It is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the regulatory amendments set forth in this final rule will not have a significant economic impact on a substantial number of small entities. The rule merely clarifies that, consistent with existing law and CBP practice, an importer is subject to the same declaration requirement that is established for claiming NAFTA duty preference in order to claim the exemption of the MPF for goods that are eligible for preferential duty treatment under the NAFTA. CBP is also clarifying, consistent with current CBP practice, that a Certificate of Origin is not required for a commercial importation consisting of originating goods, the total value of which does not exceed $2,500, if the required statement is attached. Lastly, this document remedies two incorrect addresses and an incorrect Code of Federal Regulations citation, and incorporates non-substantive amendments to certain sections in the regulations to reflect the nomenclature changes effected by the transfer of CBP to the Department of Homeland Security and the reorganization of certain offices in CBP by the Safe Port Act as well as certain other minor editorial changes.

Paperwork Reduction Act

Because the changes with possible paperwork implications set forth in this document are merely clarifications of existing requirements, there is no need to amend the paperwork burden for the number previously approved by OMB for part 181 of 19 CFR. The clearance number for part 181 is 1651–0098.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 103

Administrative practice and procedure, Freedom of information.

19 CFR Part 178

Collections of information, Paperwork requirements, Reporting and recordkeeping requirements.

19 CFR Part 181

Canada, Customs duties and inspection, Imports, Mexico, Trade agreements (North American Free-Trade Agreement).

Amendments to the CBP Regulations

■ For the reasons set forth above, parts 103, 178, and 181 of title 19 of the Code of Federal Regulations (19 CFR parts 103, 178, and 181) are amended as set forth below.

PART 103—AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 103 continues to read in part as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

§ 103.1 [Amended]

■ 2. Amend § 103.1 by removing the address citation ''New York, 6 World Trade Center, New York, New York 10048'' and adding in its place the address citation ''New York, One Penn Plaza, 10th Floor, New York, NY 10119.''

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 3. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

■ 4. Amend § 178.2 by removing the entries for §§ 12.130(c) and 12.132.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 5. The authority citation for part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314.

* * * * *

■ 6. In § 181.21:
■ a. Paragraph (a) is revised.
■ b. Paragraph (b) is amended by removing the word ''Customs'' and, in its place, adding the term ''CBP''.

§ 181.21 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration.* In connection with a claim for preferential tariff treatment, or for the exemption from the merchandise processing fee, for a good under the NAFTA, the U.S. importer must make a formal declaration that the good qualifies for such treatment. The declaration may be made by including on the entry summary, or equivalent documentation, including electronic submissions, the symbol ''CA'' for a good of Canada, or the symbol ''MX'' for a good of Mexico, as a prefix to the subheading of the HTSUS under which each qualifying good is classified. Except as otherwise provided in 19 CFR 181.22 and except in the case of a good to which Appendix 6.B to Annex 300-B of the NAFTA applies (see also 19 CFR 102.25), the declaration must be based on a complete and properly executed original Certificate of Origin, or copy thereof, which is in the possession of the importer and which covers the good being imported.

* * * * *

§ 181.22 [Amended]

■ 7. In § 181.22:
■ a. Paragraph (b) introductory text is amended by removing the word ''Customs'' the first instance it appears and, in its place, adding the term ''CBP''.
■ b. In paragraph (b)(1), the three references to ''Customs Form 434'' are removed and references to ''CBP Form 434'' are added in their place; the reference to the ''Office of Field Operations, U.S. Customs Service'' is removed and the reference ''Office of International Trade, U.S. Customs and Border Protection'' is added in its place.
■ c. Paragraph (b)(4) is amended by removing the word ''Customs'' and, in its place, adding the term ''CBP''.
■ d. Paragraph (d)(1)(iii) is amended by removing the phrase ''of a good whose value'', and the phrase ''for which the total value of originating goods'' is added in its place.

§ 181.74 [Amended]

■ 8. In § 181.74:

■ a. Paragraph (a) is amended by removing the citation to ''181.72(a)(2)(iii)'' and adding in its place the citation to ''181.72(a)(3)(iii)'', and by removing the word ''Customs'' and, in its place, adding the term ''CBP''.

■ b. Paragraphs (b) and (c) are amended by removing the term ''Customs'' each place it appears and, in its place, adding the term ''CBP''.

■ c. In paragraph (d) introductory text, the reference to ''Customs officer'' is removed and the term ''CBP officer'' is added in its place; and the two references to ''Customs'' which follow are removed and in each instance the term ''CBP'' is added in its place.

■ d. Paragraph (e)(1) is amended, in the second sentence following the heading, by removing the word ''Customs'' and, in its place, adding the term ''CBP'', and by removing the address citation ''Project North Star Coordination Center, P.O. Box 400, Buffalo, New York 14225–0400'', and, in its place, adding the address citation ''U.S. Customs and Border Protection, Office of International Trade, Commercial Targeting and Enforcement, 1300 Pennsylvania Ave., NW., Washington, DC 20229''.

■ e. Paragraph (e)(2) is amended by removing the phrase ''Customs may'', and adding in its place the phrase ''CBP may''.

§ 181.93 [Amended]

■ 9. In § 181.93:

■ a. In paragraph (a), the two references to ''Commissioner of Customs'' are removed and in each instance references to ''Commissioner of U.S. Customs and Border Protection'' are added in its place, and the address citation ''National Commodity Specialist Division, United States Customs Service, 6 World Trade Center, New York, NY 10048'' is removed and the address citation ''National Commodity Specialist Division, U.S. Customs and Border Protection, One Penn Plaza, 10th Floor, New York, NY 10119'' is added in its place.

■ b. Paragraphs (b)(1)(i), (b)(1)(ii), (b)(3), (b)(4), (b)(5)(i)(A), and (d) are amended by removing the word ''Customs'' each place it appears and, in its place, adding the term ''CBP''.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: September 10, 2007.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 07–4551 Filed 9–14–07; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2006P–0487]

Food Labeling; Health Claims; Dietary Noncariogenic Carbohydrate Sweeteners and Dental Caries

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this interim final rule to amend the regulation authorizing a health claim on noncariogenic carbohydrate sweeteners and dental caries, i.e., tooth decay, to include isomaltulose, a noncariogenic sugar. FDA is taking this action in response to a health claim petition submitted on behalf of Cargill, Inc. Based on the totality of publicly available scientific evidence, FDA now has determined that the nutritive sweetener isomaltulose, like other noncariogenic carbohydrate sweeteners listed in the dental caries health claim regulation, is not fermented by oral bacteria to an extent sufficient to lower dental plaque pH to levels that would contribute to the erosion of dental enamel. Therefore, FDA has concluded that isomaltulose does not promote dental caries, and it is amending the regulation authorizing a health claim relating certain noncariogenic sweeteners and the nonpromotion of dental caries to include isomaltulose as a substance eligible for the claim.

DATES: This interim final rule is effective September 17, 2007. Submit written or electronic comments by December 3, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2006P–0487, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No. 2006P–0487 for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jillonne Kevala, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Background

The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535) amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important respects. One aspect of the 1990 amendments was that they clarified FDA's authority to regulate health claims on food labels and in food labeling.

In 1993, FDA issued a regulation to implement the health claim provisions of the 1990 amendments entitled ''Food Labeling: General Requirements for Health Claims for Food'' (58 FR 2478, January 6, 1993), which established a process for petitioning the agency to authorize health claims about substance-disease relationships and set out the types of information that a health claim petition must include (21 CFR 101.70). This regulation became effective on May 8, 1993.

The final rule that established § 101.80 (21 CFR 101.80) (61 FR 43433, August 23, 1996) (the 1996 final rule), relating sugar alcohols to the nonpromotion of dental caries, completed the first rulemaking that FDA conducted in response to a health claim petition (Docket No. 1995P–0003). Section 101.80 (the dental caries health claim) was subsequently amended, to expand the substances which are the subject of the claim, to include noncariogenic carbohydrate sweeteners other than sugar alcohols (67 FR 71461, December 2, 2002) (the 2002 amendment). Section 101.80(a) describes the role of fermentable carbohydrates, (i.e., most dietary sugars and starches), in the development of dental caries. The fermentation of these carbohydrates by microorganisms produces organic acids on the surface of teeth, which contribute to the development of dental caries through erosion of tooth enamel. Section 101.80(b) explains that some carbohydrate sweeteners, such as sugar alcohols, are relatively noncariogenic because they are fermented by oral microorganisms more slowly than are fermentable carbohydrates and consequently, the rate of acid production is lower than that from fermentable carbohydrates. Noncariogenic carbohydrate sweeteners, when used in place of fermentable sugars, are useful in that they do not promote dental caries as do the sugars they replace. Section 101.80(c) describes the specific requirements of the dental caries health claim, including the requirement that the food bearing the claim be ''sugar free'' (§ 101.80(c)(2)(iii)(A)). Section 101.80(c)(2)(ii) also lists 11 noncariogenic carbohydrate sweeteners (xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, erythritol, D-tagatose, and sucralose) that are eligible for the claim. Section 101.80(c)(2)(iii)(C) further states that, ''When carbohydrates other than those listed in paragraph (c)(2)(ii) of this section are present in the food, the food shall not lower plaque pH below 5.7 by bacterial fermentation either during consumption or up to 30 minutes after consumption, as measured by the indwelling plaque pH test found in 'Identification of Low Caries Risk Dietary Components,' * * *.''

FDA noted in the 1996 final rule that it would consider adding other noncariogenic carbohydrate sweeteners in the list of sweeteners eligible for the health claim based on a petition to amend the regulation that would show how the substance conforms to the requirements of §§ 101.14(b) (21 CFR 101.14(b)) and 101.80 and that provides evidence that the additional noncariogenic carbohydrate sweetener will not lower dental plaque pH below 5.7 (61 FR 43433 at 43442). Section 101.80 was first amended in 1997 to list the sugar alcohol erythritol as an additional noncariogenic carbohydrate sweetener eligible for the claim (62 FR 63653, December 2, 1997). The petition to list erythritol in § 101.80 (Docket No. 1997P–0206) presented scientific data from a rodent cariogenicity study and from a human *in vivo* indwelling plaque pH test of erythritol. The agency was satisfied that this evidence was consistent with the results of the studies that investigated the cariogenic potential of the substances previously listed in § 101.80(c)(2)(ii)(A) and that erythritol met the requirements of § 101.14(b). Therefore, erythritol was added to the list of sugar alcohols eligible as a noncariogenic carbohydrate sweetener. Section 101.80 was again amended in the 2002 amendment to add D-tagatose, a non-fermentable sugar, to the list of substances eligible for the health claim. This action was based upon clinical evidence that ingestion of D-tagatose would not lower plaque pH below 5.7 as measured by the indwelling plaque pH method. Because D-tagatose is a sugar, not a sugar alcohol, the 2002 amendment also changed the title of the regulation from ''sugar alcohols'' to ''noncariogenic carbohydrate sweeteners.'' The most recent amendment of § 101.80 was to list sucralose, a non-nutritive sweetener, as an eligible noncariogenic sweetener (71 FR 15559, March 29, 2006).

II. Petition and Grounds

A. The Petition

On August 31, 2006, FDA received a health claim petition (Ref. 1) from Hyman, Phelps & McNamara, P.C., submitted on behalf of Cargill, Inc. (petitioner), under section 403(r)(4) of the act (21 U.S.C. 343(r)(4)). The petition requested that FDA amend § 101.80 to authorize a noncariogenic dental health claim for isomaltulose. FDA notified the petitioner on December 8, 2006, that the initial review of the petition had been completed and that the petition had been filed for further action in accordance with section 403(r)(4) of the act. If the agency does not act, by either denying the petition or issuing a proposed regulation to authorize the health claim, within 90 days of the date of filing for further action, the petition is deemed to be denied unless an extension is mutually agreed upon by the agency and the petitioner (section 403(r)(4)(A)(i) of the act and 21 CFR 101.70(j)(3)(iii)). On March 5, 2007, FDA and the petitioner mutually agreed to extend the deadline for the agency's decision on the petition until September 5, 2007. The petitioner requested that FDA consider exercise of its authority under section 403(r)(7) of the act to make the amendment to § 101.80 effective upon publication.

B. Nature of the Substance

The petitioner identified the substance, which is the subject of the petitioned health claim, to be isomaltulose. Isomaltulose (CAS Reg. No. 13718–94–0) (6-O-α-D-glucopyranosyl-D-fructose) is a disaccharide sugar. The petitioner identified the intended food use of isomaltulose as a nutritive sweetener. A 2005 generally recognized as safe (GRAS) notification to FDA (Ref. 2) identified use of isomaltulose as a nutritive sweetener in a variety of foods to have been determined to be GRAS for food use. For the purpose of a health claim, the term ''substance'' has been defined as ''* * * a specific food or component of food * * *'' (§ 101.14(a)(2)). An ingredient added to a food as a sweetener is a component of food. As such, FDA concludes that isomaltulose is a ''substance'' as defined in § 101.14(a)(2) for the purpose of food labeling, which characterizes the relationship of any substance to a disease or health-related condition.

C. Review of Preliminary Requirements for a Health Claim

1. The Substance Is Associated With a Disease for Which the U.S. Population Is at Risk

Dental caries continues to affect a large segment of the U.S. population, notwithstanding its decline in recent years (Ref. 3). The U.S. Department of Health and Human Services' Healthy People 2010 Objectives recognizes dental caries as the single most common chronic disease during childhood, and states that 30 percent of adults have untreated dental decay (Ref. 4). Based

on these facts, FDA concludes that, as required in § 101.14(b)(1), dental caries is a disease for which the general U.S. population is at risk.

2. The Substance Is a Food

When a health claim involves consumption of a substance at other than decreased dietary levels, the substance that is the subject of the health claim must contribute taste, aroma, or nutritive value, or any other technical effect listed in § 170.3(o) (21 CFR 170.3(o)) to the food, and must retain that attribute when consumed at the levels that are necessary to justify a claim (§ 101.14(b)(3)(i)). The petitioner stated that the intended use of isomaltulose in food is as a nutritive sweetener. Isomaltulose contributes taste (sweetness), nutritive value (source of calories), and a technical effect (nutritive sweetener) listed in § 170.3(o)(21) to the food and retains these attributes when consumed at levels that are necessary to justify a claim. Thus, the agency concludes that the preliminary requirement of § 101.14(b)(3)(i) is satisfied.

3. The Substance Is Safe and Lawful

Section 101.14(b)(3)(ii) requires that for a substance to be eligible for a health claim, it must be a food or a food ingredient or a component of a food ingredient whose use at the levels necessary to justify a claim has been demonstrated by the proponent of a claim, to FDA's satisfaction, to be safe and lawful under the applicable food safety provisions of the act. FDA evaluates whether the substance is ''safe and lawful'' under the applicable food safety provisions of the act. For conventional foods, this evaluation involves considering whether the ingredient that is the source of the substance is GRAS, approved as a food additive, or authorized by a prior sanction issued by FDA (see § 101.70(f)).

The petitioner asserts that there is general recognition of safety, based upon scientific procedures, for the use of isomaltulose as a nutritive sweetener in food. FDA previously received a notice on November 1, 2005, informing FDA that SÜDZUCKER AG, Mannheim/Ochsenfurt, had determined through scientific procedures that use of isomaltulose as a nutritive sweetener in a variety of foods is GRAS (the 2005 GRAS notification). FDA issued a letter on March 20, 2006 (Ref. 2), in response to this notice stating that the agency had no questions at the time regarding SÜDZUCKER's conclusion that isomaltulose is GRAS under the intended conditions of use. The intended conditions of use for isomaltulose stated in the 2005 GRAS notification include use as a nutritive sweetener in the following food categories: Baked goods and baking mixes (§ 170.3(n)(1)); beverages (§ 170.3(n)(2) and (n)(3)); cereal-based products (§ 170.3(n)(4)); chewing gum (§ 170.3(n)(6)); confectionery and frostings (§ 170.3(n)(9)); frozen dairy desserts and mixes (§ 170.3(n)(20)); fruit and water ices (§ 170.3(n)(21)); gelatins, desserts, and puddings, etc. (§ 170.3(n)(22)); jams, jellies, and spreads (§ 170.3(n)(28)); milk products (§ 170.3(n)(31)); nuts and peanut spreads (§ 170.3(n)(32)); processed fruit and fruit juices or vegetable juices (§ 170.3(n)(35)) and (n)(36)); snack foods (§ 170.3(n)(37)); sugar substitutes (§ 170.3(n)(42)); and sweet sauces, toppings, and syrups (§ 170.3(n)(43)). Other categories include nutritive formulas at 5 to 20 percent, energy-reduced foods at 5 to 40 percent, and meal replacements/slimming foods at 5 to 20 percent. Furthermore, FDA is not aware of any scientific evidence that isomaltulose, under the intended conditions of use, would be harmful. The agency has not made its own determination regarding the GRAS status of isomaltulose, however, and notes that authorization of a health claim for a substance should not be interpreted as affirmation that the use of the substance is GRAS. FDA concludes that the use of isomaltulose in food as a nutritive sweetener at levels necessary to justify the claim and in accordance with the 2005 GRAS notification demonstrates to FDA's satisfaction that such use is safe and lawful under applicable food safety provisions of the act. Therefore, FDA concludes that the preliminary requirements in § 101.14(b)(3)(ii) are satisfied.

III. Review of Scientific Evidence of the Substance-Disease Relationship

A. Basis for Evaluating the Relationship Between Isomaltulose and Dental Caries

As recognized in § 101.80, certain carbohydrate sweeteners are relatively noncariogenic compared to fermentable carbohydrates such as starch and most sugars. The relationship between noncariogenic sweeteners and dental caries involves slower fermentation by oral bacteria than that of the dietary sugars they replace. Noncariogenic sweeteners do not promote the development of dental caries because the amount and rate of organic acids resulting from their metabolism by oral bacteria is sufficiently less than that of the fermentable carbohydrates, and they do not cause the loss of minerals from tooth enamel. (§ 101.80(b)) The agency noted in the preamble to the 1996 final rule that it would take action to add additional sugar alcohols to § 101.80 when presented, in part, with evidence that the additional sugar alcohols would not lower plaque pH (i.e., raise plaque acidity) below 5.7 (61 FR 43433 at 43442). FDA has subsequently amended § 101.80 on three occasions to list additional noncariogenic sweeteners in the regulation. The three added noncariogenic sweeteners include a sugar alcohol (erythritol), a sugar (D-tagatose), and a non-nutritive sweetener (sucralose). Although the noncariogenic sweeteners that were initially the subject of the health claim were all sugar alcohols, FDA has amended § 101.80 to list additional noncariogenic sweeteners that are not sugar alcohols. When doing so, FDA also changed the title of the health claim from ''Dietary Sugar Alcohols and Dental Caries'' to ''Dietary Noncariogenic Carbohydrate Sweeteners and Dental Caries.''

Isomaltulose, the subject of the current petition, is a sugar. As is the case with the noncariogenic sweeteners now listed in the dental caries health claim, the potential dental health benefit from isomaltulose derives from its lower fermentability relative to most sugars used as food ingredients. Consequently, the criteria that FDA used to evaluate the other noncariogenic sweeteners in the existing dental caries health claim can be applied to assess whether isomaltulose also qualifies for the health claim.

B. Review of Scientific Evidence

1. Evidence Considered in Reaching the Decision

The recognized role of sucrose in the etiology of dental caries is related to the ability of sucrose to be metabolized by oral bacteria into extracellular polymers that adhere firmly to the tooth surfaces (i.e., dental plaque), and at the same time to form acids that can demineralize tooth enamel (Ref. 5). FDA initially proposed to authorize a health claim relating noncariogenic carbohydrate sweeteners and nonpromotion of dental caries (60 FR 37507, July 20, 1995), based on scientific evidence from studies evaluating changes in human dental plaque pH, plaque acid production, decalcification or remineralization of tooth enamel, and the incidence of dental caries. FDA limited its review to these types of studies because previous reviews by the Federal Government and other authorities had focused on these areas, and the majority of research efforts have also focused on these areas (60 FR 37507 at 37523). FDA concluded that

human studies showing sugar alcohols to be associated with reduced rate of acid production in dental plaque relative to sucrose and, in some studies, a reduced incidence of dental caries, were evidence for the association of sugar alcohols and a reduced risk of developing dental caries (60 FR 37507 at 37523). In the 1996 final rule, FDA noted that it would take action to add other sweeteners to the list of substances eligible for this health claim when presented with a petition that included, in part, evidence that the substance would not lower plaque pH below 5.7 (61 FR 43433 at 43442). FDA did not specify a specific method to be used in measuring plaque pH for considering the addition of other sweeteners to the list of eligible substances for this health claim. However, in order for a food that contains both noncariogenic sweeteners and fermentable carbohydrates to qualify for this health claim, § 101.80(c)(2)(iii)(C) specifies that an indwelling pH electrode method of measuring dental plaque pH is the procedure that the agency will use to verify that a food bearing the health claim does not result in a lowering of dental plaque pH below 5.7. The current petition included a report (Ref. 1, Appendix B) from an assay of the cariogenic potential of isomaltulose which used the indwelling pH electrode method of measuring dental plaque pH specified in § 101.80(c)(2)(iii)(C). This is the same type of evidence FDA considered previously in its decisions to amend § 101.80 to list D-tagatose (67 FR 71461) and sucralose (71 FR 15559).

2. Review of Isomaltulose Noncariogenic Assay Data

The petition included a report (Ref. 1, Appendix B) of an *in vivo* assay of the cariogenic potential of isomaltulose. This assay was conducted following the protocol described in ''Identification of Low Caries Risk Dietary Components,'' by T. Imfield, vol. 11, *Monographs in Oral Science*, 1983, which is incorporated by reference in the dental caries health claim (§ 101.80(c)(2)(iii)(C)). This protocol provides for the continuous telemetric recording of plaque pH *in vivo*. The test was conducted for Cerestar R & D Center, Vilvoorde, Belgium, by the University of Zurich, Dental Institute, Clinic of Preventive Dentistry, Periodontology and Cariology, Bioelectric Unit.

The plaque pH telemetry assays were performed with six test subjects in good general health. All test subjects had previously participated in similar studies and their response to positive control procedures was known. Each subject had a miniaturized glass pH-electrode implanted in a dental prosthesis. Once the plaque pH telemetric prosthesis was inserted, it remained in place throughout the test period. Test subjects refrained from all oral hygiene practices, except for water rinses, to allow a 3 to 7 day undisturbed growth of interdental plaque to accumulate over the tips of the pH electrodes.

Baseline plaque pH was measured over a 15 minute period following a 3 minute period of chewing paraffin. Test subjects then rinsed for 2 minutes with 15 milliliters (mL) of a 10 percent aqueous solution of isomaltulose; or alternatively sucking a 1.5 gram (g) tablet of pressed isomaltulose. Plaque pH response to isomaltulose was recorded for 30 minutes following isomaltulose exposure. The paraffin chew/rinse sequence was then repeated using a 10 percent sucrose rinse instead of isomaltulose. The sucrose rinse serves as a positive control to demonstrate the accurate functioning of the pH telemetric equipment and of plaque metabolism.

The study report commented that baseline plaque pH values measured following paraffin chewing coincide with those found in earlier tests with the same test subjects. The study report also commented that the observed decrease of plaque pH subsequent to the sucrose rinse (lowest pH value range was 4.40 to 4.90) demonstrates the accurate functioning of the pH telemetric equipment and of plaque metabolism on the telemetric prosthesis. The lowest interdental plaque pH recorded among the six test subjects during the 30 minutes following the isomaltulose rinse ranged from 6.00 to 6.35 (6.19 ± 0.12, mean ± standard deviation, n=6). The lowest interdental plaque pH recorded among the six test subjects during the 30 minutes following the isomaltulose tablet ranged from 5.80 to 6.65 (6.38 ± 0.39, mean ± standard deviation, n=4). The study report concluded that no critical decrease (i.e., below pH 5.7) in the interdental plaque pH due to bacterial fermentation of isomaltulose occurred following either the rinsing with 15 mL of a 10 percent solution of isomaltulose nor the sucking of a 1.5 g tablet of pressed isomaltulose. Although this report of an *in vivo* dental plaque pH test of isomaltulose constitutes a limited body of scientific evidence on the cariogenic potential of isomaltulose, FDA is satisfied that this report, in conjunction with the information previously considered by the agency on the etiology of dental caries and the effects of slowly fermentable carbohydrates, are sufficient to enable the agency to evaluate whether isomaltulose should be added to the list of substances eligible for the dental caries health claim.

IV. Decision to Authorize a Health Claim Relating Isomaltulose to the Nonpromotion of Dental Caries

FDA previously concluded that there was significant scientific agreement among qualified experts to support the relationship between certain noncariogenic carbohydrate sweeteners (e.g., some sugar alcohols, D-tagatose, and sucralose) and the nonpromotion of dental caries. The principal evidence that substantiates this relationship is *in vivo* data on the effects of noncariogenic carbohydrate sweeteners on human dental plaque pH (§ 101.80(b)). The current petition based its assertion that isomaltulose is noncariogenic on evidence from an indwelling telemetric plaque pH assay of the cariogenic potential of isomaltulose. As discussed in section III of this document, the plaque pH assay demonstrated that isomaltulose did not result in decreases in plaque pH below the critical level of pH 5.7, when introduced as either an aqueous solution or as a tablet, and therefore, would be considered to not promote demineralization of dental enamel. The results of the isomaltulose plaque pH assay are consistent with the evidence relied upon by the agency when adding other noncariogenic sweeteners to the list of sweeteners eligible for this health claim. Therefore, based on the totality of publicly available evidence pertaining to the cariogenic potential of isomaltulose and to the relationship between dental plaque pH and dental caries, FDA concludes that there is significant scientific agreement that isomaltulose does not promote dental caries. Accordingly, FDA is amending § 101.80 to authorize extending the dental caries health claim to include isomaltulose.

V. Description of Modifications to § 101.80

A. Requirements

Specific requirements for use of the dental caries health claim are provided in § 101.80(c)(2). Section 101.80(c)(2)(ii) lists noncariogenic carbohydrate sweeteners eligible for the health claim. Eligible sugar alcohols, sugars, and non-nutritive sweeteners are listed in § 101.80(c)(2)(ii)(A), (B), and (C), respectively. FDA is amending § 101.80(c)(2)(ii)(B) to include isomaltulose as an additional eligible noncariogenic sugar. Section

101.80(c)(2)(iii) specifies eligibility criteria for a food to bear the health claim on its label. The first criterion in this paragraph is that the food be ''sugar free,'' as defined in § 101.60(c)(1)(i), except that the food may contain D-tagatose (§ 101.80(c)(2)(iii)(A)). FDA is amending § 101.80(c)(2)(iii)(A) to include isomaltulose, in addition to D-tagatose, in the exception to the ''sugar free'' criterion of eligible foods.

B. Model Health Claims

Section 101.80(e) provides examples of statements that meet the requirements to make a health claim about nonpromotion of dental caries. FDA emphasizes that these ''model health claims'' are illustrative only. These model claims illustrate both the elements of the health claim statement required under § 101.80(c)(2)(i) and some of the optional elements permitted under § 101.80(d). FDA is amending § 101.80 to add isomaltulose as an additional noncariogenic carbohydrate sweetener eligible for the health claim, and is not approving specific wording of claim statements. Manufacturers continue to be free to design their own claim so long as it is consistent with agency regulations.

Under § 101.80(c)(2)(i)(H), there is a requirement that when the substance that is the subject of the claim is a noncariogenic sugar, the claim shall identify the substance as a sugar that, unlike other sugars, does not promote the development of dental caries. This requirement was added to § 101.80, along with the addition of the sugar D-tagatose as a sweetener eligible for the claim, to address the potential incongruity arising from a sugar-containing food bearing a dental caries health claim stating that foods high in sugars promote tooth decay. The model health claim examples in § 101.80(e)(1)(iii) and (iv) and § 101.80(e)(2)(iii) and (iv) are examples of health claim statements for use with D-tagatose-containing foods. FDA is revising these model health claims to change from the specific sugar ''tagatose'' to ''name of a sugar from paragraph (c)(2)(ii)(B) of this section'' to be inclusive of either tagatose or isomaltulose, or other noncariogenic sugars that may be added to the rule in the future.

Current § 101.80(e)(1) consists of examples of the full claim, and § 101.80(e)(2) consists of examples of the shortened claim for use on packages with less than 15 square inches of surface area available for labeling. The ''shortened claim'' version provided for in § 101.80(c)(2)(i)(G) may omit: (1) Stating the relationship of frequent between-meal consumption of foods high in sugars and starches and the promotion of dental caries (§ 101.80(c)(2)(i)(A)), and (2) identification of the substance by name or as a sugar alcohol (§ 101.80(c)(2)(i)(C)). The ''shortened claim'' version, however, does not omit the requirement that when a noncariogenic sugar is the subject of the claim, the substance be identified in the claim statement as a sugar. As such, the model ''shortened claims'' provided by FDA in § 101.80(e)(2) identify by name either tagatose or isomaltulose.

VI. Analysis of Impacts

FDA has examined the impacts of the interim final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this interim final rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this interim final rule concerns voluntary claims, the agency certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any 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 $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this interim final rule to result in any 1-year expenditure that would meet or exceed this amount.

FDA identified the following three options regarding this petition: (1) Deny the petition, (2) authorize the petition (add only isomaltulose to § 101.80), or (3) add isomaltulose to § 101.80 and also expand the scope of the claim to include all noncariogenic carbohydrate sweeteners. FDA concludes that authorizing the petition by adding only isomaltulose to the dental caries health claim is the best option of those identified.

Option One: Deny the Petition

The agency can only define costs and benefits relative to a baseline, and FDA usually selects the option of taking no action as the baseline because it helps readers identify the costs and benefits of actions that change the status quo. In this case, denying the petition would correspond to taking no action because it would imply no change in the dental caries health claim and thus the continuation of the status quo. By definition, the baseline itself has no costs or benefits. This does not mean that FDA ignores the costs and benefits of the baseline. Instead, it means that the agency expresses the costs and benefits of the baseline in how it calculates the costs and benefits of the other regulatory options.

Option Two: Authorize the Petition (Add Only Isomaltulose to § 101.80)

This option would allow producers who use isomaltulose to use the dental caries health claim on their product labels under certain conditions. Producers would only choose to change product labels or reformulate products if they believe that doing so will increase profits more than the costs of making those changes. Providing this information may increase profits for some producers because some consumers may find this information valuable when choosing products. Some consumers may find this information valuable because it may allow them to reduce their risk of dental carries. FDA has determined that this information has sufficient scientific support and, when provided in labeling under certain conditions, is truthful and not misleading to consumers. Therefore, using the claims will not generate offsetting costs for consumers. The agency does not know how many producers will find it worthwhile to use this claim. However, if this interim final rule is finalized without change, it is sure that to whatever extent producers use the claim, both producers and consumers will be made better off under option two than under option one. The agency can conclude that adding isomaltulose to the dental caries health claim will generate either a net increase in social benefits or, if no producers find it worthwhile to use the claims, no impact on social welfare.

Option Three: Add Isomaltulose to § 101.80 and Also Expand the Scope of the Claim to Include All Noncariogenic Carbohydrate Sweeteners

This option would allow producers who use isomaltulose and all other noncariogenic carbohydrate sweeteners to use the dental caries health claim on their product labels under certain conditions rather than just listing specific individual sweeteners. Similar to option two, producers would only choose to change product labels or reformulate products if they believe that the benefits that they will derive from doing so are at least as great as the costs of making those changes. In addition, this option would reduce the future burden on manufacturers of petitioning FDA to use the dental caries health claim for additional noncariogenic carbohydrate sweeteners, and it would also reduce FDA's burden of evaluating each petition for each individual noncariogenic carbohydrate sweetener.

However, FDA does not know the identity of all the sweeteners that may fall under the category of ''all noncariogenic carbohydrate sweeteners.'' Thus, FDA would have to extrapolate the data applicable to the known noncariogenic carbohydrate sweeteners to unknown noncariogenic carbohydrate sweeteners in that category, even though the science may not support such an extrapolation. By expanding the use of the claim to all noncariogenic carbohydrate sweeteners without reviewing the scientific data on each individual sweetener, FDA would not be able to verify that the claim was being used under circumstances where it is truthful and not misleading to consumers. If producers used the expanded claim on a product that was, in fact, not noncariogenic, then the expanded claim could actually result in an increase in the number of dental caries.

Based on these considerations, FDA cannot conclude that the potential cost savings of option three would necessarily outweigh the increased risk of producers making a false or misleading claim under the expanded claim. Therefore, FDA cannot conclude that option three would be better for social welfare than option two.

In addition, the agency notes that it does not believe this option is legally feasible. FDA believes that expanding the dental caries health claim to all carbohydrate sweeteners without reviewing the scientific data supporting such a claim of noncariogenicity for each individual carbohydrate sweetener would be a failure to carry out FDA's statutory responsibility under section 403(r)(3)(B) of the act to issue health claim regulations only when FDA determines that there is significant scientific agreement that the claim is supported by the totality of publicly available scientific evidence.

VII. Environmental Impact

The agency has determined under 21 CFR 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act

FDA concludes that the labeling provisions of this interim final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between consumption of isomaltulose and the nonpromotion of dental caries is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (see 5 CFR 1320.3(c)(2)).

IX. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a)(5) of the act provides that:

> * * * no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—* * *
>
> (5) any requirement respecting any claim of the type described in section 403(r)(1) made in the label or labeling of food that is not identical to the requirement of section 403(r) * * *

This interim final rule amends existing food labeling regulations to add isomaltulose to the authorized health claim for noncariogenic carbohydrate sweeteners and dental caries. Although this rule has a preemptive effect in that it precludes States from issuing any health claim labeling requirements for isomaltulose and the nonpromotion of dental caries that are not identical to those required by this interim final rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act. Section 403A(a)(5) of the act displaces both State legislative requirements and State common law duties. *Medtronic* v. *Lohr*, *518 U.S. 470, 503* (*1996*) (Breyer, J., concurring in part and concurring in judgment); *id. at 510* (O'Connor, J., joined by Rehnquist, C. J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone* v. *Liggett Group, Inc.*, *505 U.S. 504, 521* (*1992*) (plurality opinion); *id. at 548–49* (Scalia, J., joined by Thomas, J., concurring in judgment in part and dissenting in part).

FDA believes that the preemptive effect of this interim final rule is consistent with Executive Order 13132. Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA provided the States with an opportunity for appropriate participation in this rulemaking on August 1, 2007, when FDA's Division of Federal and State Relations provided notice via fax and e-mail transmission to State health commissioners, State agriculture commissioners, food program directors, and drug program directors as well as FDA field personnel of FDA's intent to amend the health claim regulation authorizing health claims for noncariogenic carbohydrate sweeteners and dental caries (§ 101.80). It advised the States of FDA's possible action and encouraged the States and local governments to review the notice and to provide any comments to the docket (Docket No. 2006P–0487), until September 1, 2007. FDA received no comments from any States in response to the fax and e-mail transmission. FDA is also providing an opportunity for State and local officials to comment on this interim final rule.

In conclusion, the agency has determined that the preemptive effects of this interim final rule are consistent with Executive Order 13132.

X. Issuance of an Interim Final Rule and Immediate Effective Date

FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. Section 403(r)(7) of the act authorizes us to make proposed regulations issued under section 403(r) of the act effective upon publication pending consideration of public comment and publication of a final regulation, if the agency

determines that such action is necessary. This authority enables the agency to act promptly on petitions that provide for information that is necessary to: (1) Enable consumers to develop and maintain healthy dietary practices, (2) enable consumers to be informed promptly and effectively of important new knowledge regarding nutritional and health benefits of food, or (3) ensure that scientifically sound nutritional and health information is provided to consumers as soon as possible. Proposed regulations made effective upon publication under this authority are deemed to be final agency action for purposes of judicial review. The legislative history indicates that such regulations should be issued as interim final rules (H. Conf. Rept. No. 105–399, at 98 (1997)).

The petitioner requested the agency to consider making any proposed regulation on the petitioned health claim effective upon publication of an interim final rule. FDA acknowledges that all three of the criteria in section 403(r)(7)(A) of the act have been met in the petition submitted by Hyman, Phelps & McNamara, P.C. on behalf of Cargill, Inc. The health claim will enable consumers to develop and maintain healthy dietary practices, such as limiting snacks that contain fermentable sugars. The health claim also will provide consumers with important knowledge regarding the reduced cariogenic potential of isomaltulose relative to that of other sugars, and will provide consumers with scientifically sound information on the dental health benefits of foods containing isomaltulose. Therefore, FDA is using the authority given to us in section 403(r)(7)(A) of the act to issue an interim final rule authorizing a health claim for isomaltulose and the nonpromotion of dental caries, effective immediately.

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may submit to the Division of Dockets Management, in any of the ways noted in the **ADDRESSES** section at the beginning of this document, comments regarding this interim final rule by December 3, 2007. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

This regulation is effective upon publication in the **Federal Register**. The agency will address comments and confirm or amend the interim final rule in a final rule.

XI. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cargill, Inc., ''Petition to Amend 21 CFR 101.80 to Authorize a Noncariogenicity Dental Health Claim for Isomaltulose,'' Docket No. 2006P–0487, August 31, 2006.

2. Agency Response Letter to GRAS Notice No. GRN 000184, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Food Additive Safety, March 20, 2006. Available at: *http://www.cfsan.fda.gov/~rdb/opa-g184.html*.

3. U.S. Department of Health and Human Services, *Oral Health in America: A Report of the Surgeon General—Executive Summary*, Rockville, MD, National Institute of Dental and Craniofacial Research, National Institutes of Health, May 2000. Available at: *http://www2.nidcr.nih.gov/sgr/execsumm.htm*.

4. U.S. Department of Health and Human Services, ''Oral Health,'' chapter 21, *Healthy People 2010*, vol. II, part B, 2d ed., Washington, DC., U.S. Government Printing Office, November 2000. Available at: *http://www.healthypeople.gov/document/html/volume2/21oral.htm*.

5. Medline Plus Medical Encyclopedia, ''Dental Cavities.'' Available at U.S. National Library of Medicine and the National Institutes of Health MedlinePlus: *http://www.nlm.nih.gov/medlineplus/ency/article/001055.htm*.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. Section 101.80 is amended by revising paragraphs (c)(2)(ii)(B), (c)(2)(iii)(A), (e)(1)(iii), (e)(1)(iv), (e)(2)(iii), and (e)(2)(iv) to read as follows:

§ 101.80 Health claims: dietary noncariogenic carbohydrate sweeteners and dental caries.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) The sugars D-tagatose and isomaltulose.

* * * * *

(iii) * * *

(A) The food shall meet the requirement in § 101.60(c)(1)(i) with respect to sugars content, except that the food may contain D-tagatose or isomaltulose.

* * * * *

(e) * * *

(1) * * *

(iii) Frequent eating of foods high in sugars and starches as between-meal snacks can promote tooth decay. [Name of sugar from paragraph (c)(2)(ii)(B) of this section], the sugar used to sweeten this food, unlike other sugars, may reduce the risk of dental caries.

(iv) Frequent between-meal consumption of foods high in sugars and starches promotes tooth decay. [Name of sugar from paragraph (c)(2)(ii)(B) of this section], the sugar in [name of food], unlike other sugars, does not promote tooth decay.

* * * * *

(2) * * *

(iii) [Name of sugar from paragraph (c)(2)(ii)(B) of this section] sugar does not promote tooth decay.

(iv) [Name of sugar from paragraph (c)(2)(ii)(B) of this section] sugar may reduce the risk of tooth decay.

Dated: September 6, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–18196 Filed 9–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 2007N–0186]

RIN 0910–AB88

Petition to Request an Exemption From 100 Percent Identity Testing of Dietary Ingredients: Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 24, 2007, the comment period for the interim final rule (IFR) that appeared in the **Federal Register** of June 25, 2007 (72 FR 34959). In the IFR, FDA requested comments on a procedure for a petition to request an exemption from 100 percent identity testing of dietary ingredients. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit written and electronic comments by October 24, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2007N–0186, and/or Regulation Identifier Number (RIN) 0910–AB88, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and/or RIN for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vasilios Frankos, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1696.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 25, 2007 (72 FR 34959), FDA published an IFR with a 90-day comment period to request comments on a procedure for a petition to request an exemption from 100 percent identity testing of dietary ingredients. Comments on the exemption procedure will provide an opportunity for interested persons to comment on whether this exemption procedure should be modified, and if so, whether there is any additional information that may be helpful to articulate with respect to what a petition needs to show that may inform future guidance.

The agency has received a request for a 60-day extension of the comment period for the IFR. The request conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the IFR.

FDA has considered the request and is extending the comment period for the IFR for 30 days, until October 24, 2007. The agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 11, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–18293 Filed 9–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

25 CFR Part 900

Contracts Under the Self-Determination and Education Assistance Act; Change of Address for the Claims Branch

AGENCY: Indian Health Service (IHS).

ACTION: Final Rule; change of address.

SUMMARY: The Indian Health Service is amending its regulations governing contracts under the Indian Self-Determination and Education Assistance Act to reflect a change of address due to the relocation of the Claims Branch.

DATES: This rule change is effective September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Hankie Ortiz, Acting Director, Division of Regulatory Affairs, IHS, 801 Thompson Avenue, Twinbrook Metro Plaza, Suite 450, Rockville, Maryland 20852, Telephone (301) 443–1116.

SUPPLEMENTARY INFORMATION:

I. Background

Regulations promulgated by the IHS to govern the administration of contracts under the Indian Self-Determination and Education Assistance Act reference a mailing address for the Claims Branch. The Claims Branch has moved its office to a new location. This action provides the new mailing address for filing medical-related claims with the Claims Branch.

II. Procedural Requirements

A. Determination To Issue Final Rule Effective in Less than 30 Days

IHS has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b) do not apply to this rulemaking. The changes being made relate solely to procedure and practice. The changes therefore, meet the requirements for exemption from notice and comment in 5 U.S.C. 553(b)(A).

B. Review Under Procedural Statutes and Executive Orders

IHS has reviewed this rule under the following statutes and Executive Orders governing rulemaking procedures: The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.;* the Regulatory Flexibility Enforcement Act, 5 U.S.C. 601 *et seq.;* the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.;* the Paperwork Reduction Act, 4 U.S.C. 3501 *et seq.;* Executive Order 12630 (Takings); Executive Order 12866 (Regulatory Planning and Review); Executive Order 12988 (Civil Justice Reform); Executive Order 13132 (Federalism); Executive Order 13175 (Tribal Consultation); and Executive Order 13211 (Energy Impacts). IHS has determined that this rule does not trigger any of the procedural requirements of those statutes and Executive Orders, since this rule is technical in nature and merely changes the mailing address for the Claims Branch.

List of Subjects in 25 CFR Part 900

Administrative practice and procedure, Buildings and facilities, Claims, Government contracts, Government property management, Grant programs—Indians, Health care, Indians, Indians—business and finance.

■ For the reasons stated in the preamble, IHS amends its regulation in 25 CFR Part 900 as follows:

PART 900—FEDERAL TORT CLAIMS ACT COVERAGE GENERAL PROVISIONS PROCEDURE FOR FILING MEDICAL-RELATED CLAIM

■ 1. The authority citation for part 900 continues to read as follows:

Authority: 25 U.S.C. 450f *et seq.*

§ 900.201 [Amended]

■ 2. Section 900.201 is amended by removing ''Chief, PHS Claims Branch, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857'' and adding in its place Office of the General Counsel, General Law Division, Claims Office, 330 Independence Avenue, SW, Room 4256, Wilbur J. Cohen Federal Building, Washington, DC 20201.''

Dated: September 5, 2007.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 07–4585 Filed 9–14–07; 8:45 am]

BILLING CODE 4165–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0276; FRL–8456–4]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from the usage of solvents. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 16, 2007 without further notice, unless EPA receives adverse comments by October 17, 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 comments, identified by docket number RO9–OAR–2007–0276, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule we are approving with the date that the amended rule was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local	Rule No.	Rule title	Adopted	Submitted
MDAQMD	442	Usage of Solvents	02/27/06	10/05/06

On October 24, 2006, we determined the submittal of October 5, 2006 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved a version of San Bernardino County Air Pollution Control District Rule 442 into the SIP on June 9, 1982 (47 FR 25013). This rule remains effective in the portion of San Bernardino County that is under the MDAQMD's jurisdiction. We also approved a version of South Coast Air Quality Management District Rule 442 into the SIP on November 16, 1983 (48 FR 52054). This rule remains effective in the portion of Riverside County that is under the MDAQMD's jurisdiction.

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. This rule was developed as part of the local air district's programs to control these pollutants.

The purposes of the MDAQMD Rule 442 revisions relative to the SIP rule are as follows:

- The rule is revised to conform to present MDAQMD rule format and to be consistent with other District rules.
- Section (A)—This section has been renamed ''General'' to conform with standard MDAQMD rule format. Subsections (A)(1) 'Purpose' and (A)(2) 'Applicability' have been revised to update terminology to reflect current regulatory trends and to remove unnecessary and obsolete references.
- Section (B)—This section has been modified to update the terminology to reflect current regulatory trends. A variety of other terms have been added and revised to conform to definitions contained in Regulation XIII. The organic materials definition was revised to more accurately reflect language that could be used to demonstrate compliance with other District rules requiring recording and labeling of VOC materials.
- Section (C)—This section has been renamed ''Requirements'' and all procedural requirements have been moved to this section. The rule amendments remove restrictions to the use of non-photochemically reactive solvents and change the VOC usage restriction from 39.6 lbs/day to a monthly limit of 1190 lbs/month.
- Section (D)—This section has been renamed ''Exemptions'' because all exemptions have been moved to this section. An exemption for aerosol products has been added.
- Section (E)—This section has been renamed ''Monitoring, Recordkeeping and Reporting.'' The language in this section has been modified for consistency with other MDAQMD rules and regulations.
- Section (F)—This section has been named ''Test Methods'' and contains the methods for determining VOC content. Test methods have been defined and language has been updated for consistency with other MDAQMD rules and regulations.
- The current VOC emissions limit that allows disposal of up to 1.3 gallons per day of VOC by any means is made more stringent by prohibiting disposal of VOC in a manner that would allow evaporation of VOC into the atmosphere.
- The current emissions limit of 18 kg (39.6 pounds) per day of photochemically reactive solvents is converted to the monthly emission limit of 540 kg (1,190 pounds) of VOC per month.
- The current emissions limit for organic materials that come in contact with a flame, are baked, are heater cured, or are heat polymerized of 195 kg (429 pounds) per month is removed; however, the VOC emissions limit for these processes are covered by other rules in Regulations IV and XI.
- The current emissions limit deletes the 8,036 kg (18,000 pounds) per day limit for ''non-photochemically reactive'' solvents. A part of these solvents are covered by the ''VOC'' limit and a part do not have a limit because they are not precursors to ozone.
- A limit on VOC emissions from coating aerospace assemblies and a limit for tire manufactures expired by their own terms.
- Exemptions for high solid or ultra-high solid materials are removed due to a change in VOC terminology.

The revised Rule 442 will apply throughout the MDAQMD and will supersede the two SIP versions of the rule identified above.

EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating this rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not interfere with existing requirements concerning attainment of air quality standards (see section 110(1)) or relax existing control requirements (see section 193). The MDAQMD regulates an 8-hour ozone nonattainment area (see 40 CFR part 81). However, RACT is not required for Rule 442, because no major sources of VOC are expected to be covered by Rule 442. Major sources are covered by other rules in Regulations IV and XI.

Guidance and policy documents that we used to evaluate the enforceability and legal sufficiency of this rule include the following:

1. ''Requirements for Preparation, Adoption, and Submittal of Implementation Plans,'' U.S. EPA, 40 CFR part 51.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,'' September 23, 1987.
5. ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 57 FR 13498, April 16, 1992.

B. Does the rule meet the evaluation criteria?

We believe the rule is consistent with the relevant requirements and policy regarding enforceability, legal sufficiency, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's

current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted MDAQMD Rule 442 because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by October 17, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 16, 2007. This will incorporate the rule into the federally enforceable SIP.

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 (Pub. L. 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 a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 16, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 25, 2007.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(347)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(347) * * *

(i) * * *

(C) Mojave Desert Air Quality Management District.

(*1*) Rule 442, Adopted: 5/7/76; CARB Ex. Ord. G–73: 02/01/77; Readopted: 07/25/77; Amended: 02/02/79; Amended: 02/27/06.

* * * * *

[FR Doc. E7–18064 Filed 9–14–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7989]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

EFFECTIVE DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT: David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

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

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region IV				
Georgia: Chickamauga, City of, Walker County.	130181	January 10, 1974, Emerg; September 5, 1979, Reg; September 5, 2007, Sups.	Sept. 5, 2007	Sept. 5, 2007

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Columbus, City of, Muscogee County.	135158	June 19, 1970, Emerg; October 30, 1970, Reg; September 5, 2007, Sups.	.....do	Do.
Forest Park, City of, Clayton County.	130042	September 15, 1972, Emerg; May 16, 1977, Reg; September 5, 2007, Sups.	.....do	Do.
LaFayette, City of, Walker County.	130182	December 19, 1973, Emerg; February 15, 1978, Reg; September 5, 2007, Sups.	.....do	Do.
Lake City, City of, Clayton County.	130044	May 6, 1975, Emerg; September 4, 1986, Reg; September 5, 2007, Sups.	.....do	Do.
Morrow, City of, Clayton County.	130045	April 4, 1974, Emerg; February 16, 1983, Reg; September 5, 2007, Sups.	.....do	Do.
Porterdale, City of, Newtown County.	130145	July 31, 1975, Emerg; January 19, 1983, Reg; September 5, 2007, Sups.	.....do	Do.
Riverdale, City of, Clayton County.	130047	December 12, 1973, Emerg; February 15, 1978, Reg; September 5, 2007, Sups.	.....do	Do.
Rossville, City of, Walker County.	130183	December 19, 1973, Emerg; September 28, 1979, Reg; September 5, 2007, Sups.	.....do	Do.
Walker County, Unincorporated Areas.	130180	January 23, 1974, Emerg; September 28, 1979, Reg; September 5, 2007, Sups.	.....do	Do.
North Carolina: Brookford, Town of, Catawba County.	370051	July 24, 1975, Emerg; December 18, 1979, Reg; September 5, 2007, Sups.	.....do	Do.
Burke County, Unincorporated Areas.	370034	January 15, 1974, Emerg; June 17, 1991, Reg; September 5, 2007, Sups.	.....do	Do.
Catawba, Town of, Catawba County.	370052	July 8, 1974, Emerg; September 3, 1980, Reg; September 5, 2007, Sups.	.....do	Do.
Catawba County, Unincorporated Areas.	370050	October 24, 1973, Emerg; September 3, 1980, Reg; September 5, 2007, Sups.	.....do	Do.
Claremont, City of, Catawba County.	370557	May 29, 2003, Emerg; —, Reg; September 5, 2007, Sups.	.....do	Do.
Connelly Springs, Town of, Burke County.	370600	March 12, 2004, Emerg; —, Reg; September 5, 2007, Sups.	.....do	Do.
Conover, Town of, Catawba County.	370053	April 15, 1974, Emerg; September 3, 1980, Reg; September 5, 2007, Sups.	.....do	Do.
Hickory, City of, Catawba County.	370054	September 23, 1975, Emerg; August 3, 1981, Reg; September 5, 2007, Sups.	.....do	Do.
Hildebran, Town of, Burke County.	370519	June 7, 2007, Emerg; —, Reg; September 5, 2007, Sups.	.....do	Do.
Long View, Town of, Burke and Catawba Counties.	370055	June 17, 1975, Emerg; September 3, 1980, Reg; September 5, 2007, Sups.	.....do	Do.
Maiden, Township of, Catawba County.	370056	May 8, 1975, Emerg; September 3, 1980, Reg; September 5, 2007, Sups.	.....do	Do.
Morganton, City of, Burke County.	370035	November 14, 1973, Emerg; February 19, 1987, Reg; September 5, 2007, Sups.	.....do	Do.
Newton, City of, Catawba County.	370057	March 25, 1975, Emerg; September 3, 1980, Reg; September 5, 2007, Sups.	.....do	Do.
Rhodiss, Town of, Burke County.	370041	August 27, 1975, Emerg; July 3, 1986, Reg; September 5, 2007, Sups.	.....do	Do.
Region V				
Michigan: Cassopolis, Village of, Cass County.	260363	June 30, 1976, Emerg; June 1, 1979, Reg; September 5, 2007, Sups.	.....do	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Edwardsburg, Village of, Cass County.	260364	March 16, 1977, Emerg; April 20, 1979, Reg; September 5, 2007, Sups.	.....do	Do.
Vandalia, Village of, Cass County.	260370	July 6, 1976, Emerg; December 14, 1979, Reg; September 5, 2007, Sups.	.....do	Do.

*-Do.-=Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Sups—Suspension.

Dated: September 6, 2007.

David I. Maurstad,

Assistant Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–18236 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Grafton County, New Hampshire (All Jurisdictions) Docket No.: FEMA–D–7672			
Ammonoosuc River	At the mouth of Ammonoosuc River	*428	Towns of Haverhill, Lisbon, Landaff, and Bethlehem.
	Approximately 1.14 miles upstream of Littleton Dam in the Town of Littleton.	*878	
Canaan Street Lake	Entire shoreline	*1,146	Town of Canaan.
Connecticut River	Approximately 2.85 miles downstream of State Route 25 (Bradford—Piermont bridge).	*411	Town of Piermont.
	Approximately 1.48 miles downstream of Bedell Covered Bridge.	*414	
Eastman Pond	Entire shoreline	*1,110	Town of Enfield.
Hewes Brook	Approximately 1,700 feet downstream of upstream crossing of Goose Pond Road.	*696	Town of Hanover.
	At downstream side of upstream crossing of Goose Pond Road.	*706	
Pemigewasset River	Approximately 1.41 miles upstream of confluence of Webster Pond Outlet.	*476	Town of Ashland.
	Approximately 1.17 miles downstream of Bridge Street	*483	
Squam Lake	Entire shoreline	*565	Town of Holderness.

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

ADDRESSES

Town of Ashland

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) web site at *http://www.granit.sr.unh.edu/dfirms.*

Town of Bethlehem

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms.*

Town of Canaan

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms.*

Town of Enfield

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms.*

Town of Hanover

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms.*

Town of Haverhill

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms.*

Town of Holderness

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms.*

Town of Landiff

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms.*

Town of Lisbon

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms.*

Town of Piermont

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms.*

Cleveland County, North Carolina and Incorporated Areas Docket No.: FEMA–B–7711			
Adams Branch	At the confluence with Knob Creek (into First Broad River)	+890	Cleveland County (Unincorporated Areas), Town of Belwood.

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
	Approximately 50 feet upstream of Woodrow Hoyle Road (State Road 1624).	+1,018	
Tributary 1	At the confluence with Adams Branch	+904	Cleveland County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence of Adams Branch.	+983	
Ashworth Creek	At the confluence with Broad River	+669	Cleveland County (Unincorporated Areas).
	At the North Carolina/South Carolina State boundary	+788	
Tributary 5	At the confluence with Ashworth Creek	+763	Cleveland County (Unincorporated Areas).
	Approximately 600 feet upstream of Wood Road	+780	
Bald Knob Creek	At the confluence with Little Knob Creek	+946	Cleveland County (Unincorporated Areas).
	Approximately 100 feet upstream of Pruitt Road	+1,012	
Beams Lake	Approximately 275 feet upstream of the confluence with Hickory Creek (near Shelby).	+735	City of Shelby.
	Approximately 260 feet upstream of the Dam	+801	
Beason Creek	At the confluence with Buffalo Creek	+621	Cleveland County (Unincorporated Areas), City of Kings Mountain.
	Approximately 1,540 feet upstream of Marion Street	+913	
Tributary 1	At the confluence of Beason Creek	+633	Cleveland County (Unincorporated Areas).
	Approximately 600 feet upstream of the confluence with Beason Creek.	+639	
Tributary 18	At the confluence with Beason Creek	+851	City of Kings Mountain.
	Approximately 955 feet upstream of the confluence with Beason Creek.	+864	
Beaverdam Creek (near Boiling Springs).	At the confluence with First Broad River	+642	Cleveland County (Unincorporated Areas), Town of Boiling Springs.
	Approximately 170 feet upstream of Railroad	+863	
Tributary 11	At the confluence with Beaverdam Creek (near Boiling Springs).	+729	Cleveland County (Unincorporated Areas), City of Shelby.
	Approximately 1,640 feet upstream of West Dixon Boulevard/U.S. Route 74.	+782	
Tributary 6	At the confluence with Beaverdam Creek (near Boiling Springs).	+700	Cleveland County (Unincorporated Areas), Town of Boiling Springs.
	Approximately 40 feet upstream of East Homestead Avenue.	+782	
Big Harris Creek	At the confluence with First Broad River	+754	Cleveland County (Unincorporated Areas).
	Approximately 410 feet upstream of Harris Creek Road	+857	
Bowens River	At the North Carolina/South Carolina State boundary	+656	Cleveland County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Nickey Sharts Road	+726	
Broad River	At the North Carolina/South Carolina State boundary	+628	Cleveland County (Unincorporated Areas).
	At the confluence of Second Broad River	+680	
Brushy Creek	At the confluence with First Broad River	+699	Cleveland County (Unincorporated Areas), City of Shelby, Town of Kingstown.
	Approximately 0.5 mile upstream of the confluence of West Fork Brushy Creek.	+871	
Tributary 6	At the confluence with Brushy Creek Tributary 6	+752	Cleveland County (Unincorporated Areas).
	Approximately 820 feet upstream of Barbee Road	+780	
Tributary 17	At the confluence with Brushy Creek	+822	Cleveland County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Brushy Creek.	+841	
Tributary 6	At the confluence with Brushy Creek	+744	Cleveland County (Unincorporated Areas), City of Shelby.

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
	Approximately 540 feet upstream of West Zion Church Road.	+841	
Buck Branch (into West Fork Sandy Run).	At the confluence with West Fork Sandy Run	+801	Cleveland County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence with West Fork Sandy Run.	+803	
Buffalo Creek	Approximately 0.5 mile downstream of the North Carolina/South Carolina State boundary.	+595	Cleveland County (Unincorporated Areas), City of Kings Mountain, City of Shelby, Town of Belwood.
	Approximately 0.9 mile upstream of the confluence of Buffalo Creek Tributary 5.	+1,015	
Tributary 2	At the confluence with Buffalo Creek	+607	Cleveland County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Buffalo Creek.	+631	
Tributary 3	At the confluence with Buffalo Creek	+611	Cleveland County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Roseborough Road	+678	
Tributary 4	At the confluence with Buffalo Creek	+662	Cleveland County (Unincorporated Areas).
	Approximately 80 feet upstream of Borders Road	+732	
Camp Creek	At the confluence with Broad River	+651	Cleveland County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Abes Mountain Road	+707	
Church Branch	At the confluence with Sandy Run	+706	Cleveland County (Unincorporated Areas), Town of Boiling Springs.
	Approximately 0.7 mile upstream of the confluence of Sandy Run.	+717	
Cove Creek (into Wards Creek)	At the confluence with Ward Creek	+990	Cleveland County (Unincorporated Areas).
	Approximately 420 feet upstream of Brackett Hill Road	+1,063	
Cox Creek	At the confluence with Ward Creek	+947	Cleveland County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Ward Creek.	+993	
Crooked Run Creek	At the confluence with First Broad River	+816	Cleveland County (Unincorporated Areas), Town of Casar.
	Approximately 1.4 miles upstream of Grady McNeilly Road.	+1,077	
Dark Hollow Branch	At the confluence with Hinton Creek	+888	Cleveland County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Hinton Creek.	+894	
Dixon Branch	At the North Carolina/South Carolina State boundary	+687	Cleveland County (Unincorporated Areas).
	Approximately 1,110 feet upstream of Dixon School Road	+720	
Duncans Creek	At the confluence with First Broad River	+882	Cleveland County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Brooks Chapel Road	+914	
First Broad River	At the confluence with Broad River	+633	Cleveland County (Unincorporated Areas), City of Shelby, Town of Lawndale.
	Approximately 1.6 miles upstream of Moriah Church Road	+933	
Tributary 19	At the confluence with First Broad River	+691	Cleveland County (Unincorporated Areas), City of Shelby.
	Approximately 90 feet downstream of West Dixon Boulevard/Bypass 74.	+799	
Tributary 20	At the confluence with First Broad River	+693	Cleveland County (Unincorporated Areas), City of Shelby.
	Approximately 0.5 mile upstream of the confluence with First Broad River.	+697	
Tributary 23	At the confluence with First Broad River	+705	City of Shelby.

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
	Approximately 240 feet upstream of Kingsbury Street	+767	
Tributary 30	At the confluence with First Broad River	+733	Cleveland County (Unincorporated Areas).
	Approximately 1,480 feet upstream of North Lafayette Street.	+733	
Tributary 5	At the confluence with First Broad River	+646	Cleveland County (Unincorporated Areas).
	Approximately 60 feet upstream of Red Road	+661	
Tributary of Tributary 19	At the confluence with First Broad River Tributary 19	+777	City of Shelby.
	Approximately 150 feet upstream of Gardner Street	+837	
Flint Hill Creek	At the confluence with Hinton Creek	+874	Cleveland County (Unincorporated Areas).
	Approximately 40 feet upstream of Hollis Road	+910	
Gilliam Creek	At the confluence with Muddy Fork	+783	Cleveland County (Unincorporated Areas).
	Approximately 150 feet downstream of Gilliam Creek Tributary 2.	+809	
Tributary 1	At the confluence with Gilliam Creek	+786	Cleveland County (Unincorporated Areas).
	Approximately 1,700 feet upstream of Old Post Road	+814	
Tributary 2	Approximately 600 feet upstream of the confluence with Gilliam Creek.	+811	Cleveland County (Unincorporated Areas).
	Approximately 780 feet upstream of Marys Grove Road	+818	
Glenn Creek	At the confluence with Buffalo Creek	+889	Cleveland County (Unincorporated Areas), Town of Bellwood.
	At the Lincoln/Cleveland County boundary	+898	
Grassy Branch	At the confluence with First Broad River	+819	Cleveland County (Unincorporated Areas), Town of Polkville.
	Approximately 270 feet downstream of Enid Street	+1,045	
Grog Creek	At the confluence with Sandy Run	+679	Cleveland County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Grog Creek Tributary 9.	+833	
Tributary 9	At the confluence with Grog Creek	+808	Cleveland County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Gantts Grove Church Road.	+840	
Grover Tributary	Approximately 0.3 mile upstream of the confluence with Buffalo Creek.	+620	Cleveland County (Unincorporated Areas), Town of Grover.
	Approximately 2.1 miles upstream of Bethlehem Church Road.	+930	
Hawkins Branch	At the confluence with Beaverdam Creek (near Boiling Springs).	+642	Cleveland County (Unincorporated Areas).
	Approximately 700 feet upstream of Beaverdam Creek (near Boiling Springs).	+642	
Hickory Creek (near Shelby)	At the confluence with First Broad River	+676	Cleveland County (Unincorporated Areas), City of Shelby.
	Approximately 0.4 mile upstream of Airport Road	+842	
Tributary 12	At the confluence with Hickory Creek (near Shelby)	+795	City of Shelby.
	Approximately 560 feet upstream of Wendover Heights Drive.	+869	
Tributary 8	At the confluence with Hickory Creek (near Shelby)	+741	City of Shelby.
	Approximately 1,100 feet upstream of Weathers Street	+848	
Tributary 9	At the confluence with Hickory Creek (near Shelby)	+747	City of Shelby.
	Approximately 0.4 mile upstream of Country Club Circle	+784	
Tributary of Tributary of Tributary 9.	At the confluence with Hickory Creek (near Shelby) Tributary 9.	+762	City of Shelby.
	Approximately 1,000 feet upstream of the confluence with Hickory Creek Tributary 9.	+770	
Tributary of Tributary 9	At the confluence with Hickory Creek (near Shelby) Tributary of Tributary 9.	+764	City of Shelby.
	Approximately 650 feet upstream of confluence with Hickory Creek (near Shelby) Tributary of Tributary 9.	+768	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Hinton Creek	At the confluence with First Broad River	+860	Cleveland County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Stroud Road	+979	
Tributary 8	At the confluence with Hinton Creek	+909	Cleveland County (Unincorporated Areas).
	Approximately 150 feet upstream of Tan Yard Road	+943	
Jolly Branch	At the confluence with Broad River	+646	Cleveland County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Broad River.	+669	
Kings Creek	Approximately 860 feet downstream of the North Carolina/South Carolina State boundary.	+689	Cleveland County (Unincorporated Areas), City of Kings Mountain.
	Approximately 600 feet upstream of Interstate 85	+788	
Tributary 6	At the confluence with Kings Creek	+748	Cleveland County (Unincorporated Areas), City of Kings Mountain.
	Approximately 890 feet upstream of Interstate 85	+841	
Kings Mountain Reservoir	Entire shoreline	+740	Cleveland County (Unincorporated Areas), City of Kings Mountain.
Knob Creek (into First Broad River).	At the confluence with First Broad River	+806	Cleveland County (Unincorporated Areas), Town of Belwood.
	Approximately 590 feet upstream of the confluence of Knob Creek (into First Broad River) Tributary 5.	+1,002	
Tributary 3	At the confluence with Knob Creek (into First Broad River)	+945	Cleveland County (Unincorporated Areas).
	Approximately 760 feet upstream of the confluence with Knob Creek (into First Broad River).	+951	
Tributary 5	At the confluence with Knob Creek (into First Broad River)	+990	Cleveland County (Unincorporated Areas).
	Approximately 930 feet upstream of the confluence with Knob Creek (into First Broad River).	+1,005	
Lick Branch	At the confluence with Buffalo Creek	+603	Cleveland County (Unincorporated Areas).
	Approximately 50 feet downstream of Watterson Road	+733	
Little Buffalo Creek	At the confluence with Buffalo Creek	+835	Cleveland County (Unincorporated Areas).
	Approximately 60 feet upstream of East Stage Coach Trail.	+854	
Little Creek	At the confluence with Glenn Creek	+891	Town of Belwood.
	At the Lincoln/Cleveland County boundary	+961	
Little Harris Creek	At the confluence with Big Harris Creek	+760	Cleveland County (Unincorporated Areas).
	Approximately 440 feet upstream of West Double Shoals Road.	+801	
Little Hickory Creek	At the confluence with Hickory Creek (near Shelby)	+711	Cleveland County (Unincorporated Areas), City of Shelby.
	Approximately 0.4 mile upstream of Duck Pond Road	+821	
Little Knob Creek	At the confluence with Knob Creek (into First Broad River)	+853	Cleveland County (Unincorporated Areas).
	At the confluence of Bald Knob Creek	+946	
Little Persimmon Creek	At the confluence with Persimmon Creek	+715	Cleveland County (Unincorporated Areas), City of Kings Mountain.
	Approximately 0.4 mile upstream of Brook Road	+872	
Logan Branch	At the confluence with Sulpher Springs Branch	+719	Cleveland County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Ellis Road	+743	
Long Branch (into Beason Creek).	At the confluence with Beason Creek	+656	Cleveland County (Unincorporated Areas), City of Kings Mountain.
	Approximately 2.4 miles upstream of Bethlehem Church Road.	+826	
Long Branch (into Buffalo Creek).	At the confluence with Buffalo Creek	+807	Cleveland County (Unincorporated Areas).

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
	Approximately 275 feet downstream of Jim Elliott Road	+834	
Long Creek	At the confluence with Buffalo Creek	+759	Cleveland County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Arlee Drive	+937	
Mangess Creek	At the confluence with First Broad River	+766	Cleveland County (Unincorporated Areas).
	Approximately 240 feet upstream of Philadelphia Road	+832	
Tributary 3	At the confluence with Mangess Creek	+803	Cleveland County (Unincorporated Areas).
	Approximately 120 feet upstream of Selkirk Drive	+857	
Mayne Creek	At the confluence with Sandy Run.	+778	Cleveland County (Unincorporated Areas).
	Approximately 900 feet upstream of Padgett Road	+821	
Tributary 3	At the confluence with Mayne Creek	+789	Cleveland County (Unincorporated Areas).
	Approximately 0.3 mile upstream of West Zion Church Road.	+855	
Tributary of Tributary 3	At the confluence with Mayne Creek Tributary 3	+797	Cleveland County (Unincorporated Areas).
	Approximately 350 feet downstream of West Zion Church Road.	+855	
Muddy Fork	At the confluence with Buffalo Creek	+658	Cleveland County (Unincorporated Areas).
	At the Gaston/Cleveland County boundary	+828	
Tributary	At the confluence with Muddy Fork	+746	Cleveland County (Unincorporated Areas).
	Approximately 100 feet upstream of Beattie Road	+877	
Tributary 5	At the confluence with Muddy Fork	+816	Cleveland County (Unincorporated Areas).
	Approximately 100 feet downstream of Doc Wehunt Road	+818	
No Business Creek	At the confluence with First Broad River	+910	Cleveland County (Unincorporated Areas).
	Approximately 30 feet upstream of Moriah School Road	+1,032	
Persimmon Creek	At the confluence with Muddy Fork	+708	Cleveland County (Unincorporated Areas).
	Approximately 60 feet upstream of Rollingbrook Road	+824	
Poplar Branch	At the confluence with Beaverdam Creek (near Boiling Springs).	+673	Cleveland County (Unincorporated Areas), Town of Boiling Springs.
	Approximately 260 feet upstream of Patrick Avenue	+745	
Potts Creek	At the confluence with Muddy Fork	+659	Cleveland County (Unincorporated Areas), City of Kings Mountain.
	Approximately 1,100 feet upstream of Waco Road	+886	
Tributary 11	At the confluence with Potts Creek	+859	City of Kings Mountain.
	Approximately 0.4 mile upstream of the confluence with Potts Creek.	+881	
Tributary 6	At the confluence with Potts Creek	+737	Cleveland County (Unincorporated Areas), City of Kings Mountain.
	Approximately 500 feet upstream of the confluence with Potts Creek.	+739	
Poundingmill Creek	At the confluence with Knob Creek (into First Broad River)	+910	Cleveland County (Unincorporated Areas).
	Approximately 150 feet upstream of Boyles Road	+1,027	
Sandy Run	At the confluence with Broad River	+659	Cleveland County (Unincorporated Areas), Town of Boiling Springs, Town of Mooresboro.
	Approximately 0.5 mile upstream of Mooresboro Road	+835	
Tributary 12	At the confluence with Sandy Run	+726	Cleveland County (Unincorporated Areas), Town of Boiling Springs.
	Approximately 0.6 mile upstream of Sandy Run Church Road.	+792	
Tributary 2	At the confluence with Sandy Run	+668	Cleveland County (Unincorporated Areas).

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
	Approximately 0.6 mile upstream of the confluence of Sandy Run.	+690	
Tributary 21	At the confluence with Sandy Run	+748	Cleveland County (Unincorporated Areas).
	Approximately 1,750 feet upstream of West Dixon Boulevard/U.S. Route 74.	+803	
Second Broad River	At the confluence with Broad River	+680	Cleveland County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Broad River.	+681	
Shoal Creek (into First Broad River).	At the confluence with First Broad River	+649	Cleveland County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Bear Creek Road	+741	
Sipe Creek	At the confluence with Kings Creek	+758	Cleveland County (Unincorporated Areas), City of Kings Mountain.
	Approximately 270 feet upstream of Horseshoe Lane	+782	
Stoney Run Creek	At the confluence with First Broad River	+834	Cleveland County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with First Broad River.	+863	
Suck Creek (into Broad River)	At the confluence with Broad River	+676	Cleveland County (Unincorporated Areas).
	Approximately 0.5 mile upstream of McCraw Road (State Road 1002).	+770	
Suck Creek (into Buffalo Creek)	At the confluence with Buffalo Creek	+768	Cleveland County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Sperling Road	+873	
Sulpher Springs Branch	At the confluence with Hickory Creek (near Shelby)	+676	Cleveland County (Unincorporated Areas), City of Shelby.
	Approximately 1,200 feet upstream of the confluence of Logan Branch.	+725	
Swainsville Creek	At the confluence with Beaverdam Creek (near Boiling Springs).	+704	Cleveland County (Unincorporated Areas), Town of Boiling Springs.
	Approximately 1.0 mile upstream of Beaver Dam Church Road.	+769	
Tim Creek	At the confluence with Ward Creek	+1,075	Cleveland County (Unincorporated Areas).
	Approximately 1,350 feet upstream of Wards Gap Road	+1,088	
UT between Shelby Raw Water Intakes.	At the confluence with First Broad River	+714	Cleveland County (Unincorporated Areas), City of Shelby.
	Approximately 0.5 mile upstream of Frederick Street	+881	
Ward Creek	At the confluence with First Broad River	+883	Cleveland County (Unincorporated Areas), Town of Casar.
	Approximately 0.4 mile upstream of South Valley Road	+1,101	
West Fork Brushy Creek	At the confluence with Brushy Creek	+861	Cleveland County (Unincorporated Areas).
	Approximately 1,350 feet upstream of Crowder Ridge Road.	+879	
West Fork Sandy Run	At the confluence with Sandy Run	+778	Cleveland County (Unincorporated Areas).
	Approximately 200 feet upstream of the confluence of Buck Branch (into West Fork Sandy Run).	+801	
Whiteoak Creek	At the confluence with Buffalo Creek	+740	Cleveland County (Unincorporated Areas), City of Kings Mountain, Town of Waco.
	Approximately 0.5 mile upstream of State Route 150	+924	
Williams Creek	At the confluence with First Broad River	+721	Cleveland County (Unincorporated Areas), City of Shelby.
	Approximately 330 feet upstream of North Lafayette Street.	+744	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Yancey Creek	At the confluence with First Broad River	+633	Cleveland County (Unincorporated Areas), Town of Boiling Springs.
	Approximately 0.8 mile upstream of Keen Drive	+861	

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

ADDRESSES

City of Kings Mountain
Maps are available for inspection at the Kings Mountain City Hall, 101 West Gold Street, Kings Mountain, North Carolina.
City of Shelby
Maps are available for inspection at the City of Shelby Planning Department, 315 South Lafayette Street, Shelby, North Carolina.
Town of Belwood
Maps are available for inspection at the Belwood Town Hall, 916 Belwood-Lawndale Road, Lawndale, North Carolina.
Town of Boiling Springs
Maps are available for inspection at the Boiling Springs Town Hall, 145 South Main Street, Boiling Springs, North Carolina.
Town of Casar
Maps are available for inspection at the Casar Town Hall, 137 Deviney Street, Casar, North Carolina.
Town of Grover
Maps are available for inspection at the Grover Town Hall, 207 Mulberry Road, Grover, North Carolina.
Town of Kingstown
Maps are available for inspection at the Kingstown Town Hall, 2014 Kingston Road, Kingstown, North Carolina.
Town of Lawndale
Maps are available for inspection at the Lawndale Town Hall, 207 West Main Street, Lawndale, North Carolina.
Town of Mooresboro
Maps are available for inspection at the Mooresboro Town Hall, 211 West Church Street, Mooresboro, North Carolina.
Town of Polkville
Maps are available for inspection at the Polkville Town Hall, 1234 Shytle Drive, Polkville, North Carolina.
Town of Waco
Maps are available for inspection at the Waco Town Hall, 200 North Main Street, Waco, North Carolina.
Cleveland County (Unincorporated Areas)
Maps are available for inspection at the Cleveland County Planning Department, 311 East Marion Street, Shelby, North Carolina.

Montgomery County, North Carolina and Incorporated Areas
Docket No.: FEMA–B–7708

Alls Fork	At the confluence with Beaverdam Creek	+511	Montgomery County (Unincorporated Areas).
	At the Montgomery/Davidson County boundary	+511	
Arnett Branch	At the confluence with Densons Creek	+504	Montgomery County (Unincorporated Areas).
	Approximately 75 feet downstream of Substation Road (State Road 1315).	+519	
Asheworth Branch	At the confluence with Little River	+562	Montgomery County (Unincorporated Areas).
	Approximately 200 feet upstream of King Drive	+574	
Barnes Creek	At the confluence with Uwharrie River	+330	Montgomery County (Unincorporated Areas).
	Approximately 1,570 feet upstream of Flint Hill Road	+483	
Barnes Mill Creek	At the confluence with West Fork Little River	+480	Montgomery County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with West Fork Little River.	+523	
Beaverdam Creek	At the confluence with Reynolds Creek	+511	Montgomery County (Unincorporated Areas).
	At the Montgomery/Davidson County boundary	+511	
Betsy Creek	At the confluence with West Fork Little River	+588	Montgomery County (Unincorporated Areas).
	Approximately 1,330 feet upstream of Smith Farm Road	+630	
Big Creek	Approximately 1,200 feet upstream of the confluence with Little River.	+363	Montgomery County (Unincorporated Areas).
	Approximately 3.1 miles upstream of the confluence of Little Creek.	+604	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Big Mountain Creek	At the Montgomery/Richmond County boundary	+378	Montgomery County (Unincorporated Areas).
	Approximately 890 feet upstream of Big Mountain Creek Tributary 2.	+454	
Tributary 1	At the confluence with Big Mountain Creek	+432	Montgomery County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Big Mountain Creek.	+449	
Tributary 2	At the confluence with Big Mountain Creek	+450	Montgomery County (Unincorporated Areas).
	Approximately 1,800 feet upstream of the confluence with Big Mountain Creek.	+471	
Big Town Creek	At the confluence with Little River	+211	Montgomery County (Unincorporated Areas).
	Approximately 1.44 miles upstream of NC 732 Highway	+368	
Big Wolf Branch	At the confluence with Little Hamer Creek	+257	Montgomery County (Unincorporated Areas).
	Approximately 200 feet upstream of Warner Farm Road	+283	
Bishop Creek	At the confluence with Dumas Creek	+486	Montgomery County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Shiloh Church Road	+563	
Bridgers Creek	Approximately 1,000 feet upstream of the confluence with Little River.	+380	Montgomery County (Unincorporated Areas).
	Approximately 680 feet downstream of Currie Road	+549	
Cabin Creek	At the Montgomery/Moore County boundary	+486	Montgomery County (Unincorporated Areas).
	Approximately 0.8 mile upstream of U.S. Highway 220	+587	
Tributary	At the confluence with Cabin Creek	+538	Montgomery County (Unincorporated Areas).
	Approximately 1,000 feet upstream of Post Office Road	+557	
Cedar Creek	Approximately 500 feet upstream of the confluence with Little River.	+389	Montgomery County (Unincorporated Areas).
	Approximately 0.66 mile upstream of McCaskill Road	+540	
Cheek Creek	At the Montgomery/Richmond County boundary	+207	Montgomery County (Unincorporated Areas).
	Approximately 2.0 miles upstream of the confluence of Indian Branch.	+418	
Clark's Creek Tributary	Approximately 80 feet upstream of the railroad	+284	Town of Mount Gilead.
	At NC Highway 731	+289	
Clark's Creek	At the confluence with Pee Dee River	+230	Montgomery County (Unincorporated Areas).
	Approximately 1.6 miles upstream of NC Highway 24/27	+539	
Cotton Creek	At the Montgomery/Moore County boundary	+477	Montgomery County (Unincorporated Areas).
	Approximately 40 feet upstream of Cotton Creek Road	+507	
Densons Creek	At the confluence with Little River	+395	Montgomery County (Unincorporated Areas), Town of Troy.
	Approximately 600 feet upstream of Substation Road	+520	
Dicks Creek	At the confluence with Little River	+415	Montgomery County (Unincorporated Areas).
	Just downstream of the confluence of Lick Creek	+481	
Tributary 1	At the confluence with Dicks Creek	+424	Montgomery County (Unincorporated Areas), Town of Biscoe.
	Approximately 1.8 miles upstream of Dicks Creek	+576	
Disons Creek	At the confluence with Little River	+218	Montgomery County (Unincorporated Areas).
	Approximately 580 feet upstream of Calvery Church Road	+333	
Tributary 1	At the confluence with Disons Creek	+304	Montgomery County (Unincorporated Areas).
	Approximately 0.58 mile upstream of the confluence with Disons Creek.	+337	
Drowning Creek	At the Montgomery/Moore/Richmond County boundary	+368	Montgomery County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Dowd Road	+672	
Tributary 1	At the confluence with Drowning Creek	+406	Montgomery County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Bennett Road	+514	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Dry Creek	At the confluence with Big Mountain Creek	+389	Montgomery County (Unincorporated Areas).
	Approximately 1,340 feet upstream of Graham Road	+405	
Dumas Creek	At the confluence with Densons Creek	+452	Montgomery County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence of Flat Rock Branch.	+637	
Duncombe Creek	At the confluence with Uwharrie River	+341	Montgomery County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Uwharrie River	+367	
Dutchmans Creek	Approximately 800 feet upstream of the confluence with Uwharrie River.	+289	Montgomery County (Unincorporated Areas).
	Approximately 330 feet upstream of River Road	+348	
Flat Rock Branch	At the confluence with Dumas Creek	+581	Montgomery County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Dumas Creek	+598	
Garr Creek	At the confluence with Yadkin River	+511	Montgomery County (Unincorporated Areas).
	Approximately 280 feet upstream of Tuckertown Road	+516	
Glady Fork	At the confluence with Reynolds Creek	+511	Montgomery County (Unincorporated Areas).
	Approximately 0.6 mile upstream of NC 109 Highway	+574	
Hickory Branch	At the confluence with White Oak Creek	+540	Montgomery County (Unincorporated Areas), Town of Biscoe.
	Approximately 330 feet upstream of West Main Street	+595	
Indian Branch	At the confluence with Cheek Creek	+337	Montgomery County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Cheek Creek	+358	
Lick Creek	At the confluence with Dicks Creek	+481	Montgomery County (Unincorporated Areas).
	Approximately 30 feet upstream of the confluence of Lick Creek Tributary 1.	+544	
(into Cotton Creek)	At the confluence with Cotton Creek	+507	Montgomery County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Cotton Creek Road	+525	
Tributary 1	At the confluence with Lick Creek	+544	Montgomery County (Unincorporated Areas), Town of Biscoe.
	Approximately 650 feet upstream of Jackson Drive	+569	
Tributary 2	At the confluence with Lick Creek	+501	Montgomery County (Unincorporated Areas), Town of Biscoe.
	Approximately 0.6 mile upstream of Wright Road	+572	
Tributary 2A	At the confluence with Lick Creek Tributary 2	+512	Montgomery County (Unincorporated Areas), Town of Biscoe.
	Approximately 590 feet upstream of Shady Oak Drive	+545	
Lick Fork	At the upstream side of CC Camp Road	+301	Montgomery County (Unincorporated Areas).
	Approximately 350 feet upstream of NC Highway 27/24	+584	
Tributary 1	At the confluence with Lick Fork	+455	Montgomery County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Lick Fork.	+491	
Little Creek	At the confluence with Big Creek	+464	Montgomery County (Unincorporated Areas).
	Approximately 850 feet upstream of McCallum Road	+487	
Little Dry Creek	At the confluence with Big Creek	+374	Montgomery County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Big Creek.	+396	
Little Dumas Creek	At the confluence with Dumas Creek	+553	Montgomery County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Shiloh Church Road	+678	
Little Hamer Creek	At the Montgomery/Richmond County boundary	+241	Montgomery County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Gaddy Farm Road	+298	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Little River	At the Montgomery/Richmond County boundary	+207	Montgomery County (Unincorporated Areas).
	At the Montgomery/Randolph County boundary	+572	
Tributary 1	Approximately 2,000 feet upstream of the confluence with Little River.	+383	Montgomery County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Little River	+400	
Long Branch	At the confluence with Little River	+360	Montgomery County (Unincorporated Areas).
	Approximately 310 feet upstream of Hicks Road	+386	
McLeans Creek	At the confluence with Moccasin Creek	+338	Montgomery County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Mullinix Road	+458	
Middle Prong Hamer Creek	At the Montgomery/Richmond County boundary	+247	Montgomery County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Melton Grove Church Road.	+296	
Moccasin Creek	Approximately 1,500 feet upstream of the confluence with Uwharrie River.	+322	Montgomery County (Unincorporated Areas).
	Approximately 100 feet upstream of the confluence with West Branch.	+348	
Mountain Branch	At the confluence with Glady Fork	+523	Montgomery County (Unincorporated Areas).
	At the Montgomery/Davidson County boundary	+600	
Naked Creek (into Drowning Creek).	At the Montgomery/Richmond County boundary	+458	Montgomery County (Unincorporated Areas).
	Approximately 1,400 feet downstream of Belford Church Road.	+544	
Nichols Run	At the confluence with West Fork Little River	+545	Montgomery County (Unincorporated Areas).
	Approximately 1,350 feet upstream of Lucas Road	+596	
Tributary 1	At the confluence with Nichols Run	+555	Montgomery County (Unincorporated Areas).
	Approximately 0.9 mile upstream of NC 134 Highway N	+596	
Pee Dee River	At the Montgomery/Richmond County boundary	+220	Montgomery County (Unincorporated Areas).
	At the confluence of Yadkin River and Uwharrie River	+287	
Tributary 5	At the confluence with Pee Dee River	+222	Montgomery County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Pee Dee River	+242	
Poison Fork	At the confluence with Barnes Creek	+454	Montgomery County (Unincorporated Areas).
	Approximately 2.3 miles upstream of Flint Hill Road	+567	
Polly Branch	At the confluence with Cheek Creek	+296	Montgomery County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Cheek Creek.	+333	
Reedy Fork	At the confluence with Cedar Creek	+537	Montgomery County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Cedar Creek	+577	
Reynolds Creek	At the confluence with Yadkin River	+511	Montgomery County (Unincorporated Areas).
	At the Montgomery/Davidson County boundary	+522	
Rock Branch	At the confluence with Big Creek	+446	Montgomery County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Big Creek.	+470	
Rocky Creek (East)	At the confluence with Little River	+316	Montgomery County (Unincorporated Areas).
	Approximately 0.41 mile upstream of Mount Carmel Church Road.	+646	
Tributary 1	At the confluence with Rocky Creek	+633	Montgomery County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Mount Carmel Church Road.	+667	
Rocky Creek (West)	At the confluence with Pee Dee River	+280	Montgomery County (Unincorporated Areas).
	Approximately 0.6 mile upstream of NC Highway 24/27	+362	
Sand Branch	At the confluence with Cheek Creek	+304	Montgomery County (Unincorporated Areas).

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
	Approximately 0.4 mile upstream of the confluence with Cheek Creek.	+318	
Silver Creek	Approximately 400 feet upstream of County Line Road	+386	Montgomery County (Unincorporated Areas).
	Approximately 1.2 miles upstream of County Line Road	+413	
Suck Branch	At the confluence with Densons Creek	+428	Town of Troy.
	Just downstream of Williamson Road	+528	
Suggs Creek	At the confluence with Little River	+505	Montgomery County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Suggs Creek Tributary.	+603	
Suggs Creek Tributary	At the confluence with Suggs Creek	+586	Montgomery County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Suggs Creek	+612	
Susies Creek	At the confluence with Little River	+214	Montgomery County (Unincorporated Areas).
	Approximately 0.4 mile upstream of NC Highway 731	+272	
Thickety Creek	At the confluence with Little River	+230	Montgomery County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Thickety Creek Road	+306	
Townsend Branch	At the confluence with Woodwards Branch	+257	Montgomery County (Unincorporated Areas).
	Approximately 2.2 miles upstream of the confluence with Woodwards Branch.	+307	
Turkey Creek	Approximately 1,550 feet upstream of the confluence with Little River.	+378	Montgomery County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Little River.	+397	
Unnamed Tributary to Wolf Branch Creek.	Approximately 1,000 feet downstream of Nelson Store Road.	+241	Montgomery County (Unincorporated Areas).
	Approximately 850 feet upstream of Nelson Store Road	+248	
Uwharrie River	At the confluence with Yadkin River	+287	Montgomery County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Low Water Bridge Road.	+369	
Warner Creek	At the confluence with Rocky Creek (East)	+417	Montgomery County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Saunders Road	+472	
West Branch	At the confluence with Moccasin Creek	+348	Montgomery County (Unincorporated Areas).
	Approximately 1.2 miles upstream of McLeans Creek Road.	+403	
West Fork Little River	At the confluence with Little River	+432	Montgomery County (Unincorporated Areas).
	At the Montgomery/Randolph County boundary	+615	
West Prong Hamer Creek	At the confluence with Middle Prong Hamer Creek	+248	Montgomery County (Unincorporated Areas).
	Approximately 1.2 miles upstream of NC 109 Highway S	+293	
White Oak Creek	At the confluence with Cedar Creek	+455	Montgomery County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Martin Street	+608	
Tributary 1	At the confluence with White Oak Creek	+521	Montgomery County (Unincorporated Areas), Town of Biscoe.
	Approximately 1,600 feet upstream of Quinton Road	+580	
Tributary 1A	At the confluence with White Oak Creek Tributary 1	+541	Montgomery County (Unincorporated Areas).
	Approximately 0.4 mile upstream of White Oak Creek Tributary 1.	+573	
Wolf Creek	Approximately 1,000 feet downstream of Hogan Farm Road.	+519	Montgomery County (Unincorporated Areas).
	Approximately 1,700 feet upstream of U.S. Highway 220	+628	
Wolf Creek Tributary	At the confluence with Wolf Creek	+542	Montgomery County (Unincorporated Areas).
	Approximately 50 feet downstream of Wolf Creek Road	+609	
Woodwards Branch	At the confluence with Cheek Creek	+255	Montgomery County (Unincorporated Areas).
	Approximately 1,320 feet upstream of NC 731 Highway E	+270	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Yadkin River	At the confluence of Pee Dee River and Uwharrie River	+287	Montgomery County (Unincorporated Areas).
	Approximately 13.3 miles upstream of Uwharrie River	+566	

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

ADDRESSES

Town of Biscoe

Maps are available for inspection at the Biscoe Town Hall, 110 West Main Street, Biscoe, North Carolina.

Town of Mount Gilead

Maps are available for inspection at the Mount Gilead Town Hall, 110 West Allenton Street, Mount Gilead, North Carolina.

Montgomery County (Unincorporated Areas)

Maps are available for inspection at the Montgomery County Inspections and Zoning Office, 219 South Main Street, Troy, North Carolina.

Town of Troy

Maps are available for inspection at the Troy Town Hall, 315 North Main Street, Troy, North Carolina.

Randolph County, North Carolina and Incorporated Areas
Docket Nos.: FEMA–D–7630, FEMA–D–7686, and FEMA–D–7694

Asheworth Branch	At the Randolph/Montgomery County boundary	+574	Randolph County (Unincorporated Areas).
	Approximately 215 feet upstream of King Drive	+574	
Bachelor Creek	At the confluence with Richland Creek	+455	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence of Bachelor Creek Tributary 5.	+653	
Tributary 1	At the confluence with Bachelor Creek	+472	Randolph County (Unincorporated Areas).
	Approximately 480 feet upstream of Osborn Mill Road	+513	
Tributary 2	At the confluence with Bachelor Creek	+506	Randolph County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Bachelor Creek.	+525	
Tributary 3	At the confluence with Bachelor Creek	+515	Randolph County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Bachelor Creek Road	+615	
Tributary 4	At the confluence with Bachelor Creek	+620	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Bachelor Creek.	+637	
Tributary 5	At the confluence with Bachelor Creek	+637	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Bachelor Creek.	+656	
Back Creek	At the confluence with Caraway Creek	+429	Randolph County (Unincorporated Areas), City of Asheboro.
	Approximately 110 feet upstream of the confluence of Back Creek Tributary 1.	+572	
Tributary 1	At the confluence with Back Creek	+571	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Heath Dairy Road (State Road 1511).	+606	
Tributary 1A	At the confluence with Back Creek Tributary 1	+597	Randolph County (Unincorporated Areas).
	Approximately 1,050 feet upstream of the confluence with Back Creek Tributary 1.	+602	
Betty McGees Creek	At the confluence with Uwharrie River	+397	Randolph County (Unincorporated Areas).
	Approximately 3.7 miles upstream of Lassiter Mill Road (State Road 1107).	+505	
Big Branch	At the confluence with Little River	+656	Randolph County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Little River.	+686	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Blood Run Creek	At the confluence with Brush Creek	+495	Randolph County (Unincorporated Areas).
	At the Randolph/Chatham County boundary	+495	
Boodom Creek	At the confluence with Sandy Creek	+565	Randolph County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Unnamed Road	+690	
Tributary 1	At the confluence with Boodom Creek	+565	Randolph County (Unincorporated Areas).
	Approximately 2.1 miles upstream of the confluence with Boodom Creek.	+734	
Tributary 2	At the confluence with Boodom Creek	+582	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 480 feet upstream of Troy Estate Road	+727	
Brier Creek	At the confluence with Little Uwharrie River	+534	Randolph County (Unincorporated Areas).
	At the Davidson/Randolph County boundary	+546	
Tributary 1	At the confluence with Brier Creek	+546	Randolph County (Unincorporated Areas).
	Approximately 1,035 feet upstream of Hughes Grove Road (State Road 1400).	+585	
Brush Creek	At the confluence with Deep River	+363	Randolph County (Unincorporated Areas).
	Approximately 200 feet upstream of Langley Road	+612	
Tributary 1	At the confluence with Brush Creek	+568	Randolph County (Unincorporated Areas).
	Approximately 630 feet upstream of Browns Crossroads Road.	+597	
Bush Creek	At the confluence with Deep River	+491	Randolph County (Unincorporated Areas), Town of Franklinville
	Approximately 0.4 mile upstream of Old Liberty Road	+708	
Tributary	At the confluence with Bush Creek	+572	Randolph County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Whites Memorial Drive.	+625	
Cable Creek	At the confluence with Back Creek	+436	Randolph County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Back Creek.	+456	
Caraway Creek	At the confluence with Uwharrie River	+411	Randolph County (Unincorporated Areas), City of Archdale
	Approximately 1.6 miles upstream of Roy Farlow Road (State Road 1534).	+715	
Tributary 1	At the confluence with Caraway Creek	+494	Randolph County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Sawyer Road	+594	
Tributary 2	At the confluence with Caraway Creek	+543	Randolph County (Unincorporated Areas).
	Approximately 1,300 feet upstream of Beeson Farm Road (State Road 1525).	+627	
Tributary 3	At the confluence with Caraway Creek	+681	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Caraway Creek.	+691	
Cedar Fork Creek	At the confluence with Back Creek	+474	Randolph County (Unincorporated Areas), City of Asheboro.
	Approximately 760 feet upstream of South Church Street	+844	
Deep River	At the Randolph/Moore County boundary	+354	Randolph County (Unincorporated Areas), City of Asheboro, City of Randleman, Town of Franklinville, Town of Ramseur

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
	At the Randolph/Guilford County boundary	+672	
Tributary 15	At the confluence with Deep River	+446	Randolph County (Unincorporated Areas), Town of Ramseur.
	Approximately 1,160 feet upstream of U.S. Highway 64	+549	
Tributary 16	At the confluence with Deep River	+450	Randolph County (Unincorporated Areas), Town of Ramseur.
	Approximately 1.8 miles upstream of NC 22	+520	
Tributary 17	At the confluence with Deep River	+459	Randolph County (Unincorporated Areas), Town of Franklinville.
	Approximately 0.9 mile upstream of U.S. Highway 64	+529	
Tributary 18	At the confluence with Deep River	+467	Randolph County (Unincorporated Areas), Town of Franklinville.
	Approximately 0.5 mile upstream of Depot Street	+600	
Tributary 19	At the confluence with Deep River Tributary 18	+478	Randolph County (Unincorporated Areas), Town of Franklinville.
	Approximately 1,850 feet upstream of Clark Avenue	+562	
Tributary 20	At the confluence with Deep River	+600	Randolph County (Unincorporated Areas), City of Randleman.
	Approximately 1,320 feet upstream of Worthville Street	+675	
Tributary 21	At the confluence with Deep River	+604	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Sunset Drive	+687	
Tributary 22	At the confluence with Deep River Tributary 21	+634	Randolph County (Unincorporated Areas), City of Randleman.
	Approximately 0.7 mile upstream of Bowman Avenue	+698	
Tributary 23	At the confluence with Deep River Tributary 22	+661	Randolph County (Unincorporated Areas), City of Randleman.
	Approximately 800 feet upstream of Brookwood Acres Drive.	+736	
Tributary 24	At the confluence with Deep River	+623	Randolph County (Unincorporated Areas), City of Randleman.
	Approximately 0.9 mile upstream of Business 220	+724	
Tributary 26	At the confluence with Deep River	+664	Randolph County (Unincorporated Areas).
	At the Randolph/Guilford County boundary	+704	
Dodsons Lake	At the confluence with Sandy Creek	+583	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Julian Airport Road	+642	
Tributary 2	At the confluence with Dodsons Lake	+613	Randolph County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence with Dodsons Lake.	+626	
Tributary 1	At the confluence with Dodsons Lake	+608	Randolph County (Unincorporated Areas).
	Approximately 420 feet upstream of Upper Three Lakes Dam.	+655	
Fork Creek	At the confluence with Deep River	+354	Randolph County (Unincorporated Areas).
	Approximately 2.3 miles upstream of the confluence with Fork Creek Tributary 1.	+642	
Tributary 1	At the confluence with Fork Creek	+507	Randolph County (Unincorporated Areas).
	Approximately 600 feet upstream of Seagrove Plank Road	+734	
Tributary 2	At the confluence with Fork Creek Tributary 1	+516	Randolph County (Unincorporated Areas).
	Approximately 2.0 miles upstream of Angel Fire Trail	+645	
Tributary 3	At the confluence with Fork Creek Tributary 1	+555	Randolph County (Unincorporated Areas), Town of Seagrove.

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
	Approximately 1.6 miles upstream of the confluence with Fork Creek Tributary 1.	+622	
Gabriels Creek	At the confluence with Deep River	+548	Randolph County (Unincorporated Areas), City of Asheboro.
	Approximately 480 feet upstream of Green Valley Road	+703	
Tributary 1	At the confluence with Gabriels Creek	+551	Randolph County (Unincorporated Areas), City of Asheboro.
	Approximately 1,900 feet upstream of Old Cedar Falls Road.	+696	
Tributary 2	At the confluence with Gabriels Creek	+594	Randolph County (Unincorporated Areas), City of Asheboro.
	Approximately 0.7 mile upstream of Henley Country Road	+695	
Hannahs Creek	At the confluence with Uwharrie River	+392	Randolph County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Robbins Branch.	+517	
Hasketts Creek	At the confluence with Deep River	+580	Randolph County (Unincorporated Areas), City of Asheboro.
	Approximately 1,270 feet upstream of West Presnell Street.	+816	
Tributary 1	Just downstream of Northwood Drive	+670	City of Asheboro.
	Approximately 420 feet upstream of McKnight Street	+685	
Tributary 2	At the confluence with Hasketts Creek	+734	Randolph County (Unincorporated Areas), City of Asheboro.
	Approximately 0.6 mile upstream of West Presnell Street	+794	
Jackson Creek	At the confluence with Uwharrie River	+418	Randolph County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Jackson Creek Road (State Road 1314).	+565	
Kings Creek	At the confluence with Little River	+585	Randolph County (Unincorporated Areas)
	Approximately 1.4 miles upstream of the confluence with Little River.	+607	
Lakes Creek	At the confluence with Uwharrie River	+372	Randolph County (Unincorporated Areas)
	Approximately 0.4 mile upstream of the confluence with Uwharrie River.	+418	
Lambert Creek	At the confluence with Fork Creek	+453	Randolph County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Fork Creek.	+468	
Laniers Creek	At the confluence with Uwharrie River	+385	Randolph County (Unincorporated Areas).
	Approximately 150 feet downstream of Johnson Farm Road (State Road 1262).	+558	
Little Brush Creek	At the confluence with Brush Creek	+409	Randolph County (Unincorporated Areas).
	At the Randolph/Chatham County boundary	+454	
Little Caraway Creek	At the confluence with Caraway Creek	+461	Randolph County (Unincorporated Areas).
	Approximately 1.9 miles upstream of the confluence of Little Caraway Creek Tributary 1.	+598	
Tributary 1	At the confluence with Little Caraway Creek	+536	Randolph County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Little Caraway Creek.	+568	
Little Polecat Creek	At the confluence with Polecat Creek	+658	Randolph County (Unincorporated Areas).
	Approximately 1,050 feet upstream of dam	+769	
Tributary 1	At the confluence with Little Polecat Creek	+681	Randolph County (Unincorporated Areas).
	Approximately 1.4 miles upstream of New Salem Road	+788	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Tributary 2	At the confluence with Little Polecat Creek Tributary 1	+746	Randolph County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Little Polecat Creek Tributary 1.	+789	
Tributary 3	At the confluence with Little Polecat Creek	+699	Randolph County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Bethel Church Road	+753	
Tributary 4	At the confluence with Little Polecat Creek	+705	Randolph County (Unincorporated Areas).
	Approximately 740 feet upstream of Hunting Lodge Road	+742	
Tributary 5	At the confluence with Little Polecat Creek Tributary 4	+709	Randolph County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Hunting Lodge Road	+763	
Little River	At the Randolph/Montgomery County boundary	+572	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Southmont Drive (State Road 1145).	+742	
Tributary 10	At the confluence with Little River	+669	Randolph County (Unincorporated Areas).
	Approximately 1,645 feet upstream of the confluence with Little River.	+678	
Tributary 11	At the confluence with Little River	+672	Randolph County (Unincorporated Areas).
	Approximately 1,340 feet upstream of the confluence with Little River.	+680	
Tributary 12	At the confluence with Little River	+718	Randolph County (Unincorporated Areas).
	Approximately 230 feet upstream of U.S. Highway 220	+759	
Tributary 2	At the confluence with Little River	+578	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Little River.	+598	
Tributary 3	At the confluence with Little River	+586	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Little River.	+606	
Tributary 4	At the confluence with Little River	+588	Randolph County (Unincorporated Areas).
	Approximately 1,210 feet upstream of the confluence with Little River.	+607	
Tributary 5	At the confluence with Little River	+601	Randolph County (Unincorporated Areas).
	Approximately 1,825 feet upstream of NC Highway 134	+631	
Tributary 6	At the confluence with Little River	+614	Randolph County (Unincorporated Areas).
	Approximately 1,415 feet upstream of the confluence with Little River.	+653	
Tributary 7	At the confluence with Little River	+651	Randolph County (Unincorporated Areas).
	Approximately 1,190 feet upstream of the confluence with Little River.	+664	
Tributary 8	At the confluence with Little River	+653	Randolph County (Unincorporated Areas).
	Approximately 1,870 feet upstream of the confluence with Little River.	+665	
Tributary 9	At the confluence with Little River	+664	Randolph County (Unincorporated Areas)
	Approximately 1,375 feet upstream of the confluence with Little River.	+686	
Little Uwharrie River	At the confluence with Uwharrie River	+457	Randolph County (Unincorporated Areas), City of Trinity.
	Approximately 0.4 mile upstream of NC Highway 62	+891	
Tributary 1	At the confluence with Little Uwharrie River	+492	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Little Uwharrie River.	+506	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Tributary 10	At the confluence with Little Uwharrie River	+814	Randolph County (Unincorporated Areas), City of Trinity.
	At the Davidson/Randolph County boundary	+858	
Tributary 10A	At the confluence with Little Uwharrie River Tributary 10	+826	Randolph County (Unincorporated Areas), City of Trinity.
	Approximately 0.7 mile upstream of the confluence with Little Uwharrie River Tributary 10.	+904	
Tributary 11	At the confluence with Little Uwharrie River	+829	City of Trinity.
	At the Davidson/Randolph County boundary	+848	
Tributary 11A	At the confluence with Little Uwharrie River Tributary 11	+839	City of Trinity.
	Just upstream of the Davidson/Randolph County boundary.	+876	Randolph County (Unincorporated Areas).
Tributary 4	At the confluence with Little Uwharrie River	691	Randolph County (Unincorporated Areas).
	Approximately 880 feet upstream of Courtland Drive (State Road 3253).	+888	
Tributary 5	At the confluence with Little Uwharrie River	+704	Randolph County (Unincorporated Areas).
	Approximately 90 feet upstream of Refuge Church Drive	+790	
Tributary 6	At the confluence with Little Uwharrie River	+734	Randolph County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Little Uwharrie River.	+896	
Tributary 6A	At the confluence with Little Uwharrie River Tributary 6	+745	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Little Uwharrie River Tributary 6.	+850	
Tributary 7	At the confluence with Little Uwharrie River	+779	Randolph County (Unincorporated Areas), City of Trinity.
	Approximately 1,220 feet upstream of Finch Farm Road (State Road 1547).	+841	
Tributary 8	At the confluence with Little Uwharrie River	+793	Randoph County (Unincorporated Areas), City of Trinity.
	Approximately 1.0 mile upstream of the confluence with Little Uwharrie River.	+897	
Tributary 8A	At the confluence with Little Uwharrie River Tributary 8	+795	Randoph County (Unincorporated Areas), City of Trinity.
	Approximately 0.6 mile upstream of the confluence with Little Uwharrie River Tributary 8.	+886	
Long Branch	At the confluence with Cedar Fork Creek	+508	Randoph County (Unincorporated Areas), City of Asheboro.
	Approximately 0.5 mile upstream of Wilson Drive	+666	
Mill Creek (into Deep River)	At the confluence with Deep River	+431	Randolph County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Iron Mountain Road	+619	
Mill Creek (into Uwharrie River)	At the confluence with Uwharrie River	+384	Randolph County (Unincorporated Areas).
	Approximately 390 feet upstream of Lassiter Mill Road (State Road 1107).	+400	
Tributary 1	At the confluence with Mill Creek	+543	Randolph County (Unincorporated Areas).
	Approximately 1,500 feet upstream of Woods Stream Lane.	+631	
Tributary 2	At the confluence with Mill Creek	+547	Randolph County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Mill Creek Tributary 3.	+609	
Tributary 3	At the confluence with Mill Creek Tributary 2	+572	Randolph County (Unincorporated Areas).
	Approximately 1,800 feet upstream of dam	+600	
Tributary 4	At the confluence with Mill Creek	+585	Randolph County (Unincorporated Areas).

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
	Approximately 0.9 mile upstream of Creekway Ridge	+618	
Millstone Creek	At the confluence with Deep River	+429	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Lee Layne Road	+466	
Mount Pleasant Creek	At the confluence with Sandy Creek	+503	Randolph County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Land Estates Drive	+615	
Muddy Creek	At the confluence with Deep River	+638	Randolph County (Unincorporated Areas), City of Archdale.
	Approximately 200 feet upstream of Verta Avenue	+846	
East Tributary	At the confluence with Muddy Creek	+722	Randolph County (Unincorporated Areas), City of Archdale.
	At the Guilford/Randolph County boundary	+814	
East Tributary 2	At the confluence with Muddy Creek East Tributary	+753	Randolph County (Unincorporated Areas), City of Archdale.
	At the Guilford/Randolph County boundary	+767	
East Tributary 3	At the confluence with Muddy Creek East Tributary 2	+753	Randolph County (Unincorporated Areas), City of Archdale.
	At the Guilford/Randolph County boundary	+767	
East Tributary 4	At the confluence with Muddy Creek East Tributary	+766	Randolph County (Unincorporated Areas), City of Archdale.
	At the Randolph/Guilford County boundary	+783	
East Tributary 5	At the Randolph/Guilford County boundary	+771	City of Archdale.
	At the confluence with Muddy Creek East Tributary 4	+771	
Muddy Creek Tributary	At the confluence with Muddy Creek	+720	Randoph County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Walnut Tree Lane	+756	
West Tributary	At the confluence with Muddy Creek	+786	City of Archdale.
	Approximately 160 feet upstream of Playground Road	+842	
Nanny Branch	At the confluence with Laniers Creek	+445	Randoph County (Unincorporated Areas).
	Approximately 1,275 feet upstream of the confluence with Laniers Creek.	+463	
Narrows Branch	At the confluence with Uwharrie River	+371	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Uwharrie River.	+460	
North Prong Creek	At the Randolph/Alamance County boundary	+686	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 1,210 feet upstream of Unnamed Road	+712	
North Prong Richland Creek	At the confluence with Richland Creek	+581	Randoph County (Unincorporated Areas).
	Approximately 1,300 feet upstream of Staleys Farm Road	+694	
Tributary	At the confluence with North Prong Richland Creek	+677	Randoph County (Unincorporated Areas).
	Approximately 370 feet upstream of Tall Pine Street	+700	
North Prong Rocky River	At the Randolph/Alamance County boundary	+677	Randoph County (Unincorporated Areas), Town of Liberty.
	Approximately 210 feet upstream of South Cook Street	+754	
Penwood Branch	Approximately 1,320 feet downstream of East Presnell Street.	+747	Randolph County (Unincorporated Areas).
	Approximately 1,690 feet upstream of Glenwood Road	+846	
Polecat Creek	At the confluence with Deep River	+599	Randolph County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Polecat Creek Tributary 7.	+702	
Tributary 4	At the confluence with Polecat Creek	+671	Randolph County (Unincorporated Areas).
	At the Randolph/Guilford County boundary	+695	
Tributary 5	At the confluence with Polecat Creek Tributary 4	+683	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of dam	+710	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Tributary 6	At the confluence with Polecat Creek	+679	Randolph County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Polecat Creek.	+736	
Tributary 7	At the confluence with Polecat Creek	+696	Randolph County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Polecat Creek.	+716	
Reed Creek (into Deep River)	At the confluence with Deep River	+437	Randolph County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Wright Country Road	+619	
Reed Creek (into Little River)	At the confluence with Little River	+603	Randolph County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Burney Road (State Road 1127).	+646	
Tributary 1	At the confluence with Reed Creek	+536	Randolph County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Reed Creek.	+554	
Tributary 2	At the confluence with Reed Creek	+537	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of U.S. Highway 64	+562	
Reedy Creek	At the confluence with Little River.	+618	Randolph County (Unincorporated Areas).
	Approximately 1,870 feet upstream of the confluence with Little River.	+642	
Richland Creek	At the confluence with Deep River	+368	Randolph County (Unincorporated Areas).
	At the confluence of North and South Prong Richland Creek.	+581	
Robbins Branch	At the confluence with Hannahs Creek	+494	Randolph County (Unincorporated Areas).
	Approximately 1,345 feet upstream of the confluence with Hannahs Creek.	+507	
Rocky River	At the Randolph/Chatham County boundary	+644	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 0.4 mile upstream of dam	+736	
Tributary 2	At the confluence with Rocky River	+664	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 1.3 miles upstream of Overman Road Dam	+716	
Tributary 3	At the confluence with Rocky River	+682	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 790 feet upstream of Old U.S. 421	+724	
Tributary 4	At the confluence with Rocky River	+696	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 1,000 feet upstream of dam	+749	
Sand Branch	At the confluence with Laniers Creek	+441	Randolph County (Unincorporated Areas).
	Approximately 1,490 feet upstream of the confluence with Laniers Creek.	+462	
Sandy Creek	At the confluence with Deep River	+455	Randolph County (Unincorporated Areas), Town of Franklinville.
	Approximately 1,600 feet upstream of the confluence with Sandy Creek Tributary 11.	+730	
Tributary 1	At the confluence with Sandy Creek	+558	Randolph County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Sandy Creek.	+573	
Tributary 10	At the confluence with Sandy Creek	+684	Randolph County (Unincorporated Areas).
	Approximately 1,550 feet upstream of Greeson Country Road.	+733	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Tributary 11	At the confluence with Sandy Creek	+703	Randolph County (Unincorporated Areas).
	Approximately 900 feet upstream of the confluence with Sandy Creek.	+718	
Tributary 2	At the confluence with Sandy Creek	+576	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 2.0 miles upstream of U.S. Highway 421	+758	
Tributary 3	At the confluence with Sandy Creek	+581	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 1.8 miles upstream of York Martin Road	+735	
Tributary 4	At the confluence with Sandy Creek Tributary 3	+587	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 1.2 miles upstream of the confluence with Sandy Creek Tributary 3.	+686	
Tributary 5	At the confluence with Sandy Creek Tributary 3	+596	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 1.5 miles upstream of Bunton Swaim Road	+733	
Tributary 6	At the confluence with Sandy Creek Tributary 5	+599	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 1,320 feet upstream of dam	+724	
Tributary 7	At the confluence with Sandy Creek	+581	Randolph County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Starmount Road	+652	
Tributary 8	At the confluence with Sandy Creek	+607	Randolph County (Unincorporated Areas).
	Approximately 2.2 miles upstream of Randolph Church Road.	+741	
Tributary 9	At the confluence with Sandy Creek	+622	Randolph County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Hollow Hill Road	+708	
Second Creek	At the confluence with Uwharrie River	+396	Randolph County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Second Creek Tributary 3.	+505	
Tributary 1	At the confluence with Second Creek	+396	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Second Creek.	+407	
Tributary 2	At the confluence with Second Creek	+459	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Second Creek.	+476	
Tributary 2A	At the confluence with Second Creek Tributary 2	+463	Randolph County (Unincorporated Areas).
	Approximately 1,900 feet upstream of Salem Church Road (State Road 1304).	+483	
Tributary 3	At the confluence with Second Creek	+479	Randolph County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Bombay School Road (State Road 1178).	+512	
Silver Run Creek	At the confluence with Uwharrie River	+394	Randolph County (Unincorporated Areas).
	Approximately 275 feet upstream of Lassiter Mill Road (State Road 1107).	+402	
Simmons Branch	At the confluence with Deep River	+634	Randolph County (Unincorporated Areas).
	Approximately 1,550 feet upstream of Old Walker Mill Road Extension.	+652	
South Fork Jackson Creek	At the confluence with Jackson Creek	+506	Randolph County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence with Jackson Creek.	+545	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
South Prong Little River	At the confluence with Little River	+678	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Little River.	+685	
South Prong Richland Creek	At the confluence with Richland Creek	+581	Randolph County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Ross Harris Road	+658	
South Prong Stinking Quarter Creek.	At the Randolph/Guilford County boundary	+624	Randolph County (Unincorporated Areas), Town of Liberty.
	Approximately 0.5 mile upstream of Redbud Lane	+755	
Stinking Quarter Creek Tributary 3.	At the Randolph/Guilford County boundary	+624	Randolph County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Richland Church Road.	+681	
Taylor Branch	At the confluence with Muddy Creek	+692	Randolph County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Tuttle Road	+739	
Taylors Creek	At the confluence with Caraway Creek	+414	Randolph County (Unincorporated Areas).
	Approximately 3.3 miles upstream of Lassiter Mill Road (State Road 1107).	+543	
Toms Creek	At the confluence with Uwharrie Rover	+402	Randolph County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Richey Road (State Road 1306).	+501	
Two Mile Branch	At the confluence with Second Creek	+439	Randolph County (Unincorporated Areas).
	Approximately 1,990 feet upstream of the confluence with Second Creek.	+472	
Two Mile Creek	At the confluence with Uwharrie River	+394	Randolph County (Unincorporated Areas).
	Approximately 1,970 feet upstream of the confluence with Uwharrie River.	+398	
Uwharrie River	At the Montgomery/Randolph County boundary	+369	Randolph County (Unincorporated Areas), City of Asheboro, City of Trinity.
	Approximately 130 feet upstream of Old Mendenhall Road (State Road 1616).	+791	
Tributary 1	At the confluence with Uwharrie River	+372	Randolph County (Unincorporated Areas).
	Approximately 1,050 feet upstream of the confluence with Uwharrie River.	+380	
Tributary 2	At the confluence with Uwharrie River	+387	Randolph County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Uwharrie River.	+400	
Tributary 3	At the confluence with Uwharrie River	+388	Randolph County (Unincorporated Areas).
	Approximately 1,890 feet upstream of the confluence with Uwharrie River.	+403	
Tributary 4	At the confluence with Uwharrie River	+445	Randolph County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Uwharrie River.	+445	
Tributary 5	At the confluence with Uwharrie River	+445	Randolph County (Unincorporated Areas).
	Approximately 1,660 feet upstream of Garren Town Road (State Road 1332).	+452	
Tributary 6	At the confluence with Uwharrie River	+464	Randolph County (Unincorporated Areas).
	Approximately 335 feet upstream of Skeens Mill Road (State Road 1550).	+483	
Tributary 7	At the confluence with Uwharrie River	+520	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Sumner Road (State Road 1546).	+540	

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Tributary 8	At the confluence with Uwharrie River	+557	Randolph County (Unincorporated Areas), City of Archdale.
	Approximately 190 feet upstream of Alexandria Drive	+663	
Tributary 8A	At the confluence with Uwharrie River Tributary 8	+636	Randolph County (Unincorporated Areas), City of Archdale.
	Approximately 0.8 mile upstream of the confluence with Uwharrie River Tributary 8.	+665	
Tributary 9	At the confluence with Uwharrie River	+578	Randolph County (Unincorporated Areas), City of Trinity.
	Approximately 0.9 mile upstream of Red Fox Road	+805	
Tributary 10	At the confluence with Uwharrie River	+668	City of Trinity.
	Approximately 330 feet upstream of Maple Oak Drive	+722	
Tributary 11	At the confluence with Uwharrie River	+694	City of Trinity.
	Approximately 0.7 mile upstream of Mendenhall Road	+746	
Vestal Creek	At the confluence with Richland Creek	+565	Randolph County (Unincorporated Areas), City of Asheboro.
	At the confluence with Vestal Creek Tributary 3	+651	
Tributary 3	At the confluence of Vestal Creek Tributary 2	+662	Randolph County (Unincorporated Areas), City of Asheboro.
	Approximately 0.7 mile upstream of Browers Chapel Road	+743	
Wagners Branch	At the confluence with Little River	+582	Randolph County (Unincorporated Areas).
	Approximately 290 feet upstream of Borough Avenue	+684	
Walkers Creek	At the confluence with Uwharrie River	+376	Randolph County (Unincorporated Areas).
	Approximately 1,775 feet upstream of the confluence with Uwharrie River.	+385	
Wesley Dean Branch	At the confluence with Little River	+577	Randolph County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Little River.	+606	
West Fork Little River	At the Randolph/Montgomery County boundary	+615	Randolph County (Unincorporated Areas).
	Approximately 850 feet upstream of Mt. Lebanon Road (State Road 1111).	+710	
Tributary 1	At the confluence with West Fork Little River	+622	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with West Fork Little River.	+629	
Tributary 2	At the confluence with West Fork Little River	+676	Randolph County (Unincorporated Areas).
	Approximately 1,620 feet upstream of the confluence with West Fork Little River.	+692	
Tributary 3	At the confluence with West Fork Little River	+694	Randolph County (Unincorporated Areas).
	Approximately 1,320 feet upstream of the confluence with West Fork Little River.	+701	
Tributary 4	At the confluence with West Fork Little River	+697	Randolph County (Unincorporated Areas).
	Approximately 1,335 feet upstream of the confluence with West Fork Little River.	+703	
Tributary 5	At the confluence with West Fork Little River	+708	Randolph County (Unincorporated Areas).
	Approximately 1,010 feet upstream of the confluence with West Fork Little River.	+710	

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

ADDRESSES

City of Archdale

Maps are available for inspection at the Archdale City Hall, 307 Balfour Drive, Archdale, North Carolina.

City of Asheboro

Flooding Source(s)	Location of referenced elevation	# Depth in feet above ground modified * Elevation in feet (NGVD) + Elevation in feet (NAVD)	Communities affected
Maps are available for inspection at the City of Asheboro Planning and Zoning Department, Asheboro, North Carolina.			
Town of Franklinville			
Maps are available for inspection at the Franklinville City Hall, 163 West Main Street, Franklinville, North Carolina.			
Town of Liberty			
Maps are available for inspection at the Liberty Town Hall, 239 South Fayetteville Street, Liberty, North Carolina.			
Town of Ramseur			
Maps are available for inspection at the Ramseur Town Hall, 724 Liberty Street, Ramseur, North Carolina.			
City of Randleman			
Maps are available for inspection at the Randleman City Hall, 101 Hilliary Street, Randleman, North Carolina.			
Town of Seagrove			
Maps are available for inspection at the Seagrove Town Hall, 122 East Main Street, Seagrove, North Carolina.			
City of Trinity			
Maps are available for inspection at the Trinity City Hall, 6701 NC Highway 62, Trinity, North Carolina.			
Randolph County (Unincorporated Areas)			
Maps are available for inspection at the Randolph County Planning and Zoning Department, 725 McDowell Road, Asheboro, North Carolina.			

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: September 6, 2007.

David I. Maurstad,

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

[FR Doc. E7–18260 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/county	Source of flooding	Location	# Depth in feet above-ground * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified
		Town of Austin, Arkansas Docket No.: FEMA–B–7700		
AR	Town of Austin	Unnamed Creek	Approximately 1,500 feet downstream of Ed Haymes Road.	+235
			Approximately 3000 feet upstream from Ed Haymes Road.	+269

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

ADDRESSES

Town of Austin

Maps are available for inspection at City Hall, 202 W Hendricks, Austin, AR 72007.

		City of Cabot, Arkansas Docket No.: FEMA–B–7473		
Arkansas	City of Cabot	Bayou Two Prairie Tributary.	Approximately 150 feet upstream from the intersection with West Main Street.	+288
			Intersection of Deer Creek Road	+299
Arkansas	City of Cabot	Hudson Branch	Upstream face of Highway 367	+272
			Approximately 850 feet upstream from the intersection with Mockingbird Lane.	+287

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

ADDRESSES

Maps are available for inspection at 114 South 1st Street, Cabot, Arkansas 72023.

		Unincorporated Areas of Lonoke County, Arkansas Docket No.: FEMA–B–7473		
Arkansas	Unincorporated Areas of Lonoke County.	Hudson Branch Creek Tributary.	Confluence with Hudson Branch Creek	+260
			Approximately 700 feet upstream from the intersection with Main Street.	+314

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

ADDRESSES

Maps are available for inspection at 200 North Center Street, Lonoke, AR 72007.

		City of Ward, Arkansas Docket No.: FEMA–B–7473		
Arkansas	City of Ward	Cypress Bayou Tributary 11.	Confluence with Morrison Street	+225
			Approximately 50 feet upstream from the intersection with Brewer Street.	+234
Arkansas	City of Ward	Cypress Bayou Tributary 11.1.	Confluence with Cypress Bayou 11	+227
			Intersection with Cross Street	+241

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

State	City/town/county	Source of flooding	Location	# Depth in feet above-ground * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified

ADDRESSES

Maps are available for inspection at 405 Hickory Street, Ward, Arkansas 72126.

Kaycee, Wyoming
Docket No.: FEMA–B–7714

WY	Town of Kaycee	North Fork Powder River	Approximately 5,150 feet downstream from Highway 196—at the downstream corporate limits of Kaycee, Wyoming.	+4639
			Approximately 180 feet downstream from I–25 North—at the upstream corporate limits of Kaycee, Wyoming.	+4656

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

ADDRESSES

Town of Kaycee

Maps are available for inspection at PO Box 265, Kaycee, Town of, WY 82639.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
De Kalb County, Alabama, and Incorporated Areas **Docket Nos.: FEMA–7702 & FEMA–B–7714**			
Big Wills Creek	Approximately 7,000 feet downstream of confluence with Little Wills Creek.	+672	Town of Collinsville, Town of Hammondville, De Kalb County (Unincorporated Areas).
	Approximately 10,000 feet upstream of confluence with Little Wills Creek.	+680	
	Confluence with Davis Gap Creek	+783	
	Approximately 2,000 feet upstream of confluence with Davis Gap Creek.	+786	
	Approximately 2,500 feet upstream of confluence with Hammond Branch.	+963	
	Approximately 5,000 feet upstream of confluence with Hammond Branch.	+980	
Davis Gap Creek	Confluence with Big Wills Creek	+783	De Kalb County (Unincorporated Areas).
	Approximately 1,500 feet upstream of confluence with Big Wills Creek.	+786	
Ivy Creek	Confluence with Town Creek	+1152	De Kalb County (Unincorporated Areas).
	Approximately 1,000 feet upstream of confluence with Town Creek.	+1154	
Little Wills Creek	Confluence with Big Wills Creek	+674	Town of Collinsville, De Kalb County (Unincorporated Areas).
	Church Avenue Crossing	+710	
	Approximately 1,500 feet upstream of SR 68 Crossing	+734	
	Approximately 2,500 feet upstream of SR 68 Crossing	+738	
Little Wills Creek Tributary	Approximately 5,000 feet upstream of confluence with Little Wills Creek.	+729	Town of Collinsville.
	Approximately 5,700 feet upstream of confluence with Little Wills Creek.	+731	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Little Wills Valley Branch	Approximately 2,500 feet downstream of 41st Street South Crossing.	+839	De Kalb County (Unincorporated Areas).
	Approximately 2,000 feet downstream of 41st Street South Crossing.	+843	
Phillips Branch	Approximately 200 feet upstream of South Sauty Creek	+1166	City of Rainsville De Kalb County (Unincorporated Areas).
	Approximately 1,000 feet upstream of South Sauty Creek	+1171	
Piney Creek	Approximately 7,000 feet downstream of Horton Road Crossing.	+1199	City of Rainsville, Town of Shiloh, De Kalb County (Unincorporated Areas).
	Confluence with Piney Creek Tributary	+1215	
Town Creek	Approximately 1,000 feet upstream of confluence with Bynum Mill Branch.	+1124	City of Rainsville, De Kalb County (Unincorporated Areas).
	Approximately 2,000 feet upstream of SR35 Crossing	+1175	

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

ADDRESSES

City of Rainsville

Maps are available for inspection at 70 McCurdy Avenue, Rainsville, AL 35988.

Town of Collinsville

Maps are available for inspection at 39 Post Office Street, Collinsville, AL 35961.

Town of Hammondville

Maps are available for inspection at 37699 U.S. Highway 11, Hammondville, AL 35989.

Town of Shiloh

Maps are available for inspection at 111 Grand Avenue, Suite 200, Fort Payne, AL 35967.

De Kalb County (Unincorporated Areas)

Maps are available for inspection at 111 Grand Avenue, Suite 200, Fort Payne, AL 35967.

Geneva County, Alabama, and Incorporated Areas
Docket No.: FEMA–B–7714

Carter Mill Creek	Approximately 3,300 feet upstream of Bellwood Highway Crossing.	+111	Geneva County (Unincorporated Areas).
	Approximately 6,200 feet upstream of Bellwood Highway Crossing.	+119	
Choctawhatchee River	Approximately 1,500 feet downstream of confluence with Pea River.	+99	City of Geneva, Town of Eunola, Geneva County (Unincorporated Areas).
	Approximately 200 feet upstream of confluence with Schuttle Mill Creek.	+105	
Double Bridges Creek	City of Geneva Corporate Limits	+102	Geneva County (Unincorporated Areas).
	Approximately 1,200 feet upstream of City of Geneva Corporate Limits.	+102	
Pea River	Approximately 7,000 feet upstream of SR 27 Crossing	+102	Geneva County (Unincorporated Areas).
	Approximately 10,000 feet upstream of SR 27 Crossing	+102	
Threemile Branch	Approximately 3,800 feet upstream of confluence with Pea River.	+101	Geneva County (Unincorporated Areas).
	Approximately 6,600 feet upstream of confluence with Pea River.	+113	

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

ADDRESSES

City of Geneva

Maps are available for inspection at 517 S. Commerce, Geneva, AL 36340.

Town of Eunola

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

Maps are available for inspection at 200 S. Commerce Street, Geneva, AL 36340.

Geneva County (Unincorporated Areas)

Maps are available for inspection at 200 S. Commerce Street, Geneva, AL 36340.

Floyd County, Iowa, and Incorporated Areas
Docket No.: FEMA–D–7806

Hyers Creek	At Riverside Avenue	+1006	Floyd County (Unincorporated Areas), City of Charles City.
	Approximately 3,800 feet upstream of Cleveland Street	+1035	

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

ADDRESSES

City of Charles City

Maps are available for inspection at City Hall, 105 Milwaukee Mall, Charles City, IA 50616.

Floyd County (Unincorporated Areas)

Maps are available for inspection at Floyd County Planning and Zoning, 101 South East 1st, Charles City, IA 50616.

Lyon County, Kansas, and Incorporated Areas
Docket No: FEMA–D–7806

Beaver Creek	At confluence with Cottonwood River	+1135	Lyon County (Unincorporated Areas).
	Just upstream of Road 200	+1209	
Cottonwood River	Just upstream of Interstate 35	+1123	Lyon County (Unincorporated Areas).
	At the County Boundary with Chase County	+1144	
East Tributary to Beaver Creek	At confluence with Beaver Creek	+1142	Lyon County (Unincorporated Areas).
	Approximately 1250 feet upstream of Pond Embankment	+1218	
East Tributary to Cottonwood River.	Just upstream of Interstate 35	+1123	Lyon County (Unincorporated Areas), City of Emporia.
	Approximately 3000 feet upstream of Road 180	+1150	
Linck Creek	At confluence with Cottonwood River	+1128	Lyon County (Unincorporated Areas).
	Approximately 3000 feet upstream of Road 200	+1205	
Ludy Creek	At confluence with Link Creek	+1129	Lyon County (Unincorporated Areas).
	Just downstream of Road 190	+1173	
Moon Creek	At confluence with Cottonwood River	+1125	Lyon County (Unincorporated Areas), City of Emporia.
	Approximately 1750 feet Northwest of intersection of Road E and Road 200.	+1200	
West Tributary to Beaver Creek	At confluence with Beaver Creek	+1155	Lyon County (Unincorporated Areas).
	At County Boundary with Chase County	+1187	

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

ADDRESSES

City of Emporia

Maps are available for inspection at 104 E. 5th Avenue, Emporia, KS 66801.

Lyon County (Unincorporated Areas)

Maps are available for inspection at 430 Commercial Street, Room 205, Lyon Co. Courthouse, Emporia, KS 66801.

Phelps County, Missouri (Unincorporated Areas)
Docket No.: FEMA–B–7711

Burger Branch	Approximately 900 ft downstream side of Brookridge Drive	*967	Phelps County (Unincorporated Areas).
	About 2,200 ft upstream side of Old St. James Road	*1077	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Little Piney Creek	About 1500 ft downstream of the confluence with Newburg Branch.	*710	Phelps County (Unincorporated Areas).
	About 3000 ft upstream of MO State Highway T / Water Street	*717	

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

ADDRESSES

Phelps County (Unincorporated Areas)

Maps are available for inspection at 200 North Main Street, 200 North Main Street, MO 65401.

Wilson County, Tennessee and Incorporated Areas
Docket No.: FEMA–B–7464

Anthony Branch	Confluence with North Fork Suggs Creek	+536	Wilson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Logue Road	+579	
Bartons Creek	Just downstream of Interstate 40	+556	Wilson County (Unincorporated Areas), City of Lebanon.
	Approximately 1030 feet upstream of Franklin Road	+570	
Tributary 3	Just upstream of Alhambra Drive	+508	Wilson County (Unincorporated Areas), City of Lebanon.
	Approximately 1.0 mile upstream of Blair Lane	+674	
Beech Log Creek	Confluence with Round Lick Creek	+655	Wilson County (Unincorporated Areas), City of Watertown.
	Approximately 1.9 miles upstream of Sparta Pike	+754	
Black Branch	Approximately 1490 feet upstream of confluence with Spring Creek.	+578	Wilson County (Unincorporated Areas), City of Lebanon.
	Approximately 3150 feet upstream of Sparta Pike	+616	
Cave Creek	Confluence with Hurricane Creek	+597	Wilson County (Unincorporated Areas).
	Approximately 3780 feet upstream of Hurricane Creek Road	+610	
Cedar Creek	Approximately 1100 feet downstream of Beasleys Bend	+461	Wilson County (Unincorporated Areas).
	Approximately 2050 feet upstream of Carthage Highway	+555	
Fall Creek	Approximately 180 feet downstream of Old Murfreesboro Road.	+554	Wilson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Puckett Road	+731	
Hurricane Creek	Approximately 3590 feet downstream of Mt Creary Road	+510	Wilson County (Unincorporated Areas).
	Approximately 360 feet upstream of E Richmond Shop Road	+628	
Jennings Fork Creek	Approximately 200 feet downstream of Flat Rock Road	+513	Wilson County (Unincorporated Areas).
	Approximately 1 mile upstream of Blue Bird Road	+632	
Martha Branch	Approximately 220 feet upstream of confluence with Spencer Creek.	+509	Wilson County (Unincorporated Areas), City of Lebanon.
	Approximately 560 feet upstream of Martha-Leeville Road	+557	
North Fork Suggs Creek	Approximately 810 feet upstream of confluence with Suggs Creek.	+536	Wilson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Logue Road	+579	
Tributary 1	Confluence with North Fork Suggs Creek	+545	Wilson County (Unincorporated Areas).
	Approximately 1.4 miles upstream of North Fork Suggs Creek	+617	
Rocky Branch	Confluence with Smith Fork	+723	Wilson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Clever Creek Road	+756	
Round Lick Creek	Approximately 2130 feet downstream of Interstate 40	+557	Wilson County (Unincorporated Areas).
	Approximately 1900 upstream of Statesville Road	+668	
Shop Springs Branch	Approximately 2900 feet upstream of confluence with Spring Creek.	+601	Wilson County (Unincorporated Areas).
	Approximately 3170 feet upstream of Young Road	+660	
Tributary 1	Confluence with Shop Springs Branch	+613	Wilson County (Unincorporated Areas).
	Approximately 70 feet upstream of Shop Springs Road	+653	
Sinking Creek Tributary 1	Approximately 430 feet downstream of Hill Street	+527	City of Lebanon.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 115 feet upstream of Leeville Pike	+557	
Tributary 3	Approximately 450 feet upstream of confluence with Sinking Creek.	+594	Wilson County (Unincorporated Areas).
	Approximately 770 feet upstream of confluence with Sinking Creek.	+594	
Tributary 3.2	Confluence with Sinking Creek Tributary 3	+594	Wilson County (Unincorporated Areas).
	Approximately 60 feet upstream Murfreesboro Road	+631	
Smith Fork	Approximately 5190 feet downstream of State Highway 96	+627	Wilson County (Unincorporated Areas).
	Approximately 5030 feet upstream of Greenvale Road	+741	
Snarl Creek	Approximately 1.7 miles downstream Central Pike	+503	Wilson County (Unincorporated Areas), City of Mt. Juliet.
	Approximately 2400 feet upstream of South Mt. Juliet Road	+607	
South Fork Cedar Creek	Just downstream of Interstate 40	+577	City of Lebanon.
	Approximately 180 feet upstream of State Highway 109	+602	
Spring Creek Tributary 4	Approximately 500 feet upstream of confluence with Spring Creek.	+572	Wilson County (Unincorporated Areas).
	Approximately 100 feet upstream of Locust Grove Road	+643	
Tributary 5	Approximately 450 feet upstream of confluence with Spring Creek.	+589	Wilson County (Unincorporated Areas).
	Approximately 3560 feet upstream of confluence with Spring Creek.	+620	
Tributary 6	Approximately 900 feet upstream of confluence with Spring Creek.	+601	Wilson County (Unincorporated Areas).
	Approximately 1620 feet upstream of confluence with Spring Creek.	+604	
Suggs Creek	Just upstream of Underwood Road	+565	Wilson County (Unincorporated Areas).
	Approximately 2650 feet upstream of Stewarts Ferry Road	+619	
Tributary 1	Confluence with Suggs Creek	+568	Wilson County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Stewarts Ferry Pike	+624	
Walker Branch	Approximately 370 feet downstream of Coles Ferry Pike	+493	Wilson County (Unincorporated Areas), City of Lebanon.
	Approximately 3340 feet upstream of Hunters Point Pike	+546	

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

ADDRESSES

City of Lebanon

Maps are available for inspection at 200 Castle Heights Avenue, Lebanon, TN 37087.

City of Mt. Juliet

Maps are available for inspection at 2425 North Mt. Juliet Road, Mt. Juliet, TN 37122.

City of Watertown

Maps are available for inspection at 228 East Main Street, Courthouse Room 5, Lebanon, TN 37087.

Unincorporated Areas of Wilson County

Maps are available for inspection at 228 East Main Street, Courthouse Room 5, Lebanon, TN 37087.

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

Dated: September 4, 2007.

David I. Maurstad,

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

[FR Doc. E7–18291 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2650; MB Docket No. 05–282; RM–11229; RM–11333; RM–11337]

Radio Broadcasting Services; Anderson, SC; Aragon, GA; Chattanooga, Decatur, Harrison and Lynchburg, TN; Ringgold and Rockmart, GA; Spring City and Wartrace, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Media Bureau, at the request of Woman's World Broadcasting, Inc., deletes vacant Channel 296A at Lynchburg, Tennessee, from the FM Table of Allotments, and allots Channel 230A at Lynchburg, Tennessee, as a vacant channel in the FM Table of Allotments. The purpose of this channel substitution is to accommodate a change of community for FM Station WTSH, which is moving from Rockmart to Aragon, Georgia. The reference coordinates for Channel 230A at Lynchburg, Tennessee, are 35–21–58 NL and 86–17–18 WL, at a site 12.1 km (7.5 miles) northeast of Lynchburg. The Media Bureau also dismisses a counterproposal filed by Bart Walker to allot Channel 230A to Wartrace, Tennessee, as a first local aural service. See **SUPPLEMENTARY INFORMATION**.

DATES: This rule is effective October 17, 2007.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–282, adopted June 13, 2007, and released June 15, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Every FM channel change set forth in the Report and Order formerly required rule changes to Section 73.202(b), the FM Table of Allotments. See 70 FR 66329 (November 2, 2005). As a result of changes to the Commission's processing rules, modifications of FM channels for existing stations are no longer listed in Section 73.202(b) and are instead reflected in the Media Bureau's Consolidated Data Base System (CDBS). *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, Report and Order*, 21 FCC Rcd 14212 (December 20, 2006). Only the substitution of Channel 230A for vacant Channel 296A at Lynchburg, Tennessee, which involves an amendment to Section 73.202(b), is summarized and published in the **Federal Register**. Although the *Report and Order*, as revised, sets forth an effective date of October 8, 2007, the amendment to the FM Table of Allotments and the specified FM license modifications will be effective 30 days after publication of this summary in the **Federal Register** in compliance with Sections 1.427 and 1.429 of the Commission's rules.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Tennessee is amended by removing Channel 296A at Lynchburg and by adding Channel 230A at Lynchburg.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–18264 Filed 9–14–07; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 72, No. 179
Monday, September 17, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0276; FRL–8456–7]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from the usage of solvents. We are proposing to approve a local rule to regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 17, 2007.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2007–0276, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local MDAQMD Rule 442. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 25, 2007.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E7–18067 Filed 9–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0782; FRL–8469–3]

Approval and Promulgation of Implementation Plans; Missouri; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Missouri State Implementation Plan (SIP) submitted on May 18, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA is proposing to determine that the SIP revision fully meets the CAIR requirements for Missouri. If EPA approves the revisions, we will also withdraw the CAIR Federal Implementation Plans (CAIR FIPs) concerning SO_2, NO_X annual, NO_X ozone season emissions for Missouri. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006, and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that significantly contribute to, and interfere with maintenance of, the national ambient air quality standards for fine particulates and/or ozone in any downwind state. CAIR establishes State budgets for SO_2 and NO_X and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is proposing to approve, Missouri would meet CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions.

DATES: Comments must be received on or before October 17, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–

OAR–2007–0782, by one of the following methods:

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

2. *E-mail: jay.michael@epa.gov.*

3. *Mail:* Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. 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 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0782. 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 and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this proposal, please contact Michael Jay at (913) 551–7460 or by e-mail at *jay.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Proposing to Take?

EPA is proposing to approve a revision to Missouri's SIP submitted on May 18, 2007. In its SIP revision, Missouri would meet CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. EPA is proposing to determine that the SIP as revised will meet the applicable requirements of CAIR. Any final action approving the SIP will be taken by the Regional Administrator for Region 7. If the EPA approves this revision, the Administrator of EPA will also issue a final rule to withdraw the FIPs concerning SO_2, NO_X annual, NO_X ozone season emissions for Missouri. This action would delete and reserve 40 CFR 52.1341 and 40 CFR 52.1342, relating to the FIP obligations for Missouri. The withdrawal of the CAIR FIPs for Missouri is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for Missouri. Once the SIP is fully approved, EPA no longer has authority for the FIPs. Thus, EPA will not have the option of maintaining the FIPs following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs.

II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

The Clean Air Interstate Rule (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 SO_2, 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 SO_2 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 1 to September 30). Under CAIR, States may implement these reduction requirements 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)(i) 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 on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D)(i). 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)(i). 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.

Missouri submitted its SIP in response to EPA's section 110(a)(2)(D)(i) finding, which EPA approved in a rule published May 8, 2007 (72 FR 25975). In that rule, EPA stated that Missouri had met its obligation with regard to interstate transport by adoption of the CAIR model rule. EPA also stated that it would review and act on Missouri's CAIR rule in a separate rulemaking. This document proposes action on Missouri's CAIR rule as explained below.

On April 28, 2006, EPA promulgated FIPs 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 FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone season trading programs, as appropriate. The CAIR FIP SO_2, 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 FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain 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 additional 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 FIPs?

CAIR establishes State-wide emission budgets for SO_2 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 SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 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 SO_2 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 FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide 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 FIPs (e.g., the NO_X allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to: (1) Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_X ozone season trading program; (2) provide for State allocation of NO_X annual or ozone season allowances using a methodology chosen by the State; (3) provide for State allocation of NO_X annual allowances from the compliance supplement pool (CSP) 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 SO_2, NO_X annual, or NO_X ozone season trading programs under the opt-in provisions in the model rules.

An approved CAIR full SIP revision addressing EGUs' SO_2, NO_X annual, or NO_X ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions.

V. Analysis of Missouri's CAIR SIP Submittal

A. 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 I, and 0.125 lb/mmBtu, for Phase II, 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 State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated in the Acid Rain Program for the years in Phase I of CAIR (2010 through 2014) authorizes 0.5 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in Phase II of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

In this action, EPA is proposing approval of Missouri's SIP revision that adopts the budgets established for the State in CAIR, i.e., 59,871 (2009–2014) and 49,892 (2015–thereafter) tons for NO_X annual emissions, 26,678 (2009–2014) and 22,231 (2015–thereafter) tons

for NO_X ozone season emissions, and 137,214 (2010–2014) and 96,050 (2015–thereafter) annual tons for SO_2 emissions. Missouri's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone-season model trading rules both largely mirror 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 model rules are similar, there are some differences. For example, the NO_X annual model rule (but not the NO_X ozone season model rule) 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 model rule 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 model rule 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.

The provisions of the CAIR SO_2 model rule are also similar to the provisions of the NO_X annual and ozone season model rules. However, the SO_2 model rule is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. 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 SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

In the SIP revision, Missouri chooses to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Missouri has adopted a full SIP revision that adopts with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO_2, NO_X annual, and NO_X ozone season emissions.

C. Applicability Provisions for non-EGU NO_X SIP Call Sources

In general, the CAIR model trading rules 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 megawatts electric (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 add the applicability provisions in the State's NO_X SIP Call trading rule for non-EGUs to the applicability provisions in the State's CAIR NO_X ozone season trading rule, 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 in accordance with 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.

Missouri has chosen to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all current and future non-EGUs in the State's NO_X SIP Call trading program. The NO_X SIP Call region of the State includes the eastern one-third of the State of Missouri (70 FR 46860).

D. 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.

States may establish in their SIP submissions 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.

Missouri has chosen to replace the provisions of the CAIR NO_X annual model trading rule concerning the allocation of NO_X annual allowances with its own methodology. Missouri has chosen to distribute NO_X annual allowances to individual facilities based upon the total of their individual unit's pro-rata share of State's total heat input for all affected units in the State. The State has provided a table in rule 10 CSR 10–6.362 that provides for permanent allocations to units in Phases I and II. Additionally, the State's rule creates an energy efficiency renewable resource set-aside of 300 allowances for each year of the program. The purpose for establishing this set-aside is to serve as an incentive for saving or generating electricity through the implementation of energy efficiency and renewable generation projects. If the number of allowances awarded each year are fewer than allowances allocated to the set-aside, the State will transfer surplus allowances to the accounts of the electric utilities on a pro-rata basis in the same proportion as allocations to the units listed in the rule. Missouri's rule provides that, by May 31 of the year for which allowances are requested from the set-aside, the State will complete the process of determining what projects are eligible and how many allowances

should be provided, and of awarding the allowances to the projects. EPA interprets the rule to provide that, by the May 31 deadline, the State will transfer to the appropriate allowance tracking system accounts the allocations awarded to the eligible projects, as well as the surplus allowances provided to electric utilities.

As with the annual program described above, Missouri has chosen to replace the provisions of the CAIR NO_X ozone season model trading rule concerning allowance allocations with its own methodology. Missouri has chosen to distribute NO_X annual allowances to individual facilities based upon the total of their individual unit's pro-rata share of the State's total heat input for all affected units in the State. The State has provided a table in rule 10 CSR 10–6.364 that provides for permanent allocations to NO_X ozone season units in Phases I and II. As mentioned above, Missouri has chosen to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all current and future non-EGUs in the State's NO_X SIP Call trading program. By doing so, the three non-EGUs listed in Table II of Missouri's NO_X SIP Call rule, 10 CSR 10–6.360, are provided CAIR NO_X ozone season allowances totaling 59 allowances in Table II of 10 CSR 10–6.364 that are in addition to the State's initial allocation for both Phase I and Phase II of the CAIR NO_X ozone season trading program. The number of allowances provided to the non-EGUs in the CAIR NO_X ozone trading program are equivalent to the amount they received under Missouri's NO_X SIP Call rule.

E. Allocation of NO_X Allowances From Compliance Supplement Pool

The CAIR establishes a compliance supplement pool (CSP) to provide 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 projected magnitude of the emission reductions required by CAIR in that State. 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 annual NO_X model trading rule 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 the States.

Missouri has chosen to distribute CSP allowances using an allocation methodology that retains much of the CSP model rule language of 40 CFR 96.143. The State's methodology differs in two main ways. First, the State has added additional criteria for units subject to the Acid Rain Program that do not have an applicable NO_X emission limit to be able to apply for allocations from the CSP by limiting their emissions below what limit would have applied had the unit been limited by Acid Rain Program or State NO_X emission rate limits. Secondly, the State has chosen to modify the distribution methodology in the event the CSP is over-prescribed. If more requests for allocations have been made than CSP allowances exist, the State will divide the CSP into two pools. The smaller of the two pools is for units that combust tires, and the larger pool is for the remaining units.

F. Individual Opt-in Units

The opt-in provisions of the CAIR SIP model trading rules allow 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. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all. Missouri has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR trading programs by adopting by reference the entirety of EPA's model rule provisions for opt-in units in the CAIR NO_X annual, CAIR NO_X ozone season, and CAIR SO_2 trading programs.

VI. Proposed Actions

EPA is proposing to approve Missouri's full CAIR SIP revision submitted on May 18, 2007. Under this SIP revision, Missouri is choosing to participate in the EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. EPA believes that the SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. EPA is proposing to determine that the SIP as revised will meet the requirements of CAIR. If EPA approves this SIP revision, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for Missouri. This action would delete and reserve 40 CFR 52.1341 and 40 CFR 52.1342.

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 will result, as a consequence of that approval, in the Administrator's withdrawal of the CAIR FIP. It does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 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 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 in 40 CFR Part 52

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

Dated: September 10, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–18263 Filed 9–14–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7735]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Cook County, Illinois, and Incorporated Areas				
Calumet Union Drainage Ditch.	At confluence with Little Calumet River	+597	+592	Village of South Holland, City of Harvey, City of Markham, Unincorporated Areas of Cook County.
	500 feet upstream of confluence with Calumet Union Drainage Ditch Southwest Branch.	+609	+608	
Calumet Union Drainage Ditch Southwest Branch.	At confluence with Calumet Union Drainage Ditch	+609	+608	City of Markham, Unincorporated Areas of Cook County.
	Approximately 1100 feet downstream of 167th Street	+609	+608	
Deer Creek	At confluence with Thorn Creek	+615	+616	Village of Glenwood, Unincorporated Areas of Cook County.
	At confluence of Third Creek, downstream of Cottage Grove Avenue.	+620	+621	
Farmer's Creek	At pump station flood wall, 150 feet downstream of Busey Highway.	+633	+630	City of Des Plaines, Unincorporated Areas of Cook County.
	Approximately 1000 feet upstream of Emerson Street	+634	+633	
Higgins Creek	Just downstream of Willie Road	+656	+655	City of Des Plaines, Unincorporated Areas of Cook County.
	Just downstream of Hamilton Road	+660	+659	
Tributary A	Just downstream of Interstate 90	+657	+659	City of Des Plaines, Unincorporated Areas of Cook County, Village of Elk Grove Village.
	80 feet upstream of Higgins Road	+666	+665	
Tributary B	Confluence with Higgins Creek Tributary A	+658	+659	Unincorporated Areas of Cook County, Village of Elk Grove Village.
	Just downstream of Elmhurst Road	+658	+660	
Little Calumet River	At confluence with Calumet Sag Channel	+588	+585	Village of South Holland, City of Blue Island, City of Calumet City, City of Harvey, Unincorporated Areas of Cook County, Village of Dixmoor, Village of Dolton, Village of Lansing, Village of Riverdale.
	Illinois—Indiana State Line	+594	+596	
Midlothian Creek	At confluence with Little Calumet River	+590	+587	City of Blue Island.
	200 feet upstream of Chatham Street	+590	+589	
North Creek	At confluence with Thorn Creek	+607	+606	Unincorporated Areas of Cook County.
	Just downstream of Calumet Expressway	+608	+607	
Poplar Creek Tributary A	Just upstream of Higgins Road	+807	+809	Village of Hoffman Estates.
	Just downstream of Greenspoint Parkway	+812	+813	
Prairie Creek	At confluence with Farmer's Creek	+630	+631	City of Des Plaines, City of Park Ridge, Unincorporated Areas of Cook County, Village of Niles.
	Just downstream of Greenwood Road	None	+643	
Thorn Creek	At confluence with Little Calumet River	+597	+595	Village of South Holland, City of Calumet City, Unincorporated Areas of Cook County, Village of Glenwood, Village of Thornton.
	Approximately 500 feet upstream of the confluence with Deer Creek.	+615	+616	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Weller Creek	Approximately 570 feet downstream of Wisconsin Central Railroad.	+639	+637	Village of Mount Prospect, City of Des Plaines.
	At downstream side of Central Road	None	+664	

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

ADDRESSES

City of Blue Island

Maps are available for inspection at Building Department, 13049 Greenwood Avenue, Blue Island, IL 60406.
Send comments to The Honorable Donald E. Peloquin, Mayor, City of Blue Island, 13051 Greenwood Ave., Blue Island, IL 60406.

City of Calumet City

Maps are available for inspection at Inspectional Services Department, 687 Wentworth Road, Calumet City, IL 60409.
Send comments to The Honorable Michelle Markiewicz Qualkinbush, Mayor, City of Calumet City, 204 Pulaski Rd, PO Box 1519, Calumet City, IL 60409.

City of Des Plaines

Maps are available for inspection at City of Des Plaines Civic Center, 1420 Miner St., Des Plaines, IL 60016.
Send comments to The Honorable Anthony Arredia, Mayor, City of Des Plaines, 1420 Miner St., Des Plaines, IL 60016.

City of Harvey

Maps are available for inspection at Harvey City Hall, Planning and Development Center, 15320 Broadway Avenue, Harvey, IL 60426.
Send comments to The Honorable Eric J. Kellogg, Mayor, City of Harvey, 15320 Broadway Ave., Harvey, IL 60426.

City of Markham

Maps are available for inspection at Markham City Hall, 16313 South Kedzie Parkway, Markham, IL 60426.
Send comments to The Honorable David Webb, Mayor, City of Markham, 16313 Kedzie Pky., Markham, IL 60426.

City of Park Ridge

Maps are available for inspection at Public Works Department, 505 Butler Place, Park Ridge, IL 60068.
Send comments to The Honorable Howard Frimark, Mayor, City of Park Ridge, 505 Butler Place, Park Ridge, IL 60068.

Unincorporated Areas of Cook County

Maps are available for inspection at Cook County Building and Zoning Department, 69 West Washington, Suite 2830, Chicago, IL 60602.
Send comments to The Honorable Todd Stroger, County Board President, 69 West Washington, Suite 2830, Chicago, IL 60602.

Village of Dixmoor

Maps are available for inspection at 170 West 145th Street, Dixmoor, IL 60419.
Send comments to The Honorable Keevan Grimmett, Village President, Village of Dixmoor, 170 W. 145th St., Dixmoor, IL 60426.

Village of Elk Grove Village

Maps are available for inspection at Engineering and Community Development Department, 901 Wellington Ave., Elk Grove Village, IL 60007.
Send comments to The Honorable Craig B. Johnson, Mayor, Elk Grove Village, 901 Wellington Ave., Elk Grove Village, IL 60007.

Village of Glenwood

Maps are available for inspection at Glenwood Building Department, 13 South Rebecca Street, Glenwood, IL 60425.
Send comments to The Honorable Jeanne Maggio, Village President, Village of Glenwood, 1 Asselborn Way, Glenwood, IL 60425.

Village of Hoffman Estates

Maps are available for inspection at Hoffman Estates Development Services Department, 1900 Hassell Rd., Hoffman Estates, IL 60169.
Send comments to The Honorable William D. McLeod, Village President, Village of Hoffman Estates, 1900 Hassell Rd., Hoffman Estates, IL 60169.

Village of Lansing

Maps are available for inspection at Lansing Building Department, 18200 Chicago Avenue, Lansing, IL 60438.
Send comments to The Honorable Daniel R. Podgorski, Village President, Village of Lansing, 18200 Chicago Ave., Lansing, IL 60438.

Village of Mount Prospect

Maps are available for inspection at Public Works Department, Engineering Division, 1700 West Central Road, Mount Prospect, IL 60056.
Send comments to The Honorable Irvana Wilks, Village President, Village of Mount Prospect, 50 S. Emerson St., Mount Prospect, IL 60056.

Village of Niles

Maps are available for inspection at Niles Public Works Department, 6849 West Touhy Avenue, Niles, IL 60714.
Send comments to The Honorable Nicholas B. Blase, Mayor, Village of Niles, 1000 Civic Center Drive, Niles, IL 60714.

Village of Riverdale

Maps are available for inspection at Village Hall, Office of Community and Economic Development, 157 West 144th Street, Riverdale, IL 60827.
Send comments to The Honorable Zenovia G. Evans, Mayor, Village of Riverdale, 157 W. 144th Street, Riverdale, IL 60827.

Village of South Holland

Maps are available for inspection at Village Planning & Development Department, 16226 Wausau Avenue, South Holland, IL 60473.
Send comments to The Honorable Don A. DeGraff, Village President, Village of South Holland, 16226 Wausau Avenue, South Holland, IL 60473.

Village of Thornton

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Maps are available for inspection at Village Hall, 115 E. Margaret St., Thornton, IL 60476. Send comments to The Honorable Jack C. Swan, Village President, Village of Thornton, 115 E. Margaret St., Thornton, IL 60476.				
Lake County, Ohio, and Incorporated Areas				
Grand River/Lake Erie	Village of Grand River north-eastern corporate limit	+575	+576.	Village of Grand River.
Backwater	220 feet upstream of Fairport, Painesville, and Eastern Railway.	+575	+576	
Lake Erie	Entire Lake Erie coastline from the western City of Eastlake corporate limits to eastern corporate limits. Minor changes in floodplain boundaries.	+575	+576	City of Eastlake.
	Entire Lake Erie coastline from the western City of Mentor corporate limits to eastern corporate limits. Minor changes in floodplain boundaries.	+575	+576	City of Mentor.
	Entire Lake Erie coastline from the western City of Mentor-on-the-Lake corporate limits to eastern corporate limits. Minor changes in floodplain boundaries.	+575	+576	City of Mentor-On-The-Lake.
	Entire Lake Erie coastline from the western Village of Fairport Harbor corporate limits to eastern corporate limits. Minor changes in floodplain boundaries.	+579	+576	Village of Fairport Harbor.
	Entire Lake Erie coastline from the western Village of Lakeline corporate limits to eastern corporate limits.	None	+576	Village of Lakeline.
	Entire Lake Erie coastline from the western City of Willoughby corporate limits to eastern corporate limits.	+575	+576	City of Willoughby.
	Entire Lake Erie coastline from the western City of Willowick corporate limits to eastern corporate limits. Minor changes in floodplain boundaries.	+575	+576	City of Willowick.
	Entire Lake Erie coastline from the western Village of North Perry corporate limits to eastern corporate limits. Minor changes in floodplain boundaries.	+580	+576	Village of North Perry.
	Entire Lake Erie coastline from the western City of Eastlake corporate limits to eastern corporate limits. Minor changes in floodplain boundaries.	None	+576	Village of Timberlake.

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

ADDRESSES

City of Eastlake

Maps are available for inspection at 35150 Lakeshore Boulevard, Eastlake, OH 44095.

Send comments to The Honorable Ted Andrzejewski, Mayor, City of Eastlake, 35150 Lakeshore Boulevard, Eastlake, OH 44095.

City of Kirtland

Maps are available for inspection at 9301 Chillicothe Road, Kirtland, OH 44094.
Send comments to The Honorable Edward J. Podojil, Mayor, City of Kirtland, 9301 Chillicothe Road, Kirtland, OH 44094.

City of Mentor

Maps are available for inspection at 8500 Civic Center Boulevard, Mentor, OH 44060.
Send comments to The Honorable Ray Kirchner, Mayor, 8500 Civic Center Boulevard, Mentor, OH 44060.

City of Mentor-On-The-Lake

Maps are available for inspection at 5860 Andrews Road, Mentor-on-the-Lake, OH 44060.
Send comments to The Honorable John M. Rogers, Mayor, 5860 Andrews Road, Mentor-on-the-Lake, OH 44060.

City of Painesville

Maps are available for inspection at 7 Richmond Street, PO Box 601, Painesville, OH 44077.
Send comments to Ms. Rita C. McMahon, City Manager, City of Painesville, 7 Richmond Street, PO Box 601, Painesville, OH 44077.

City of Wickliffe

Maps are available for inspection at 28730 Ridge Road, Wickliffe, OH 44092.
Send comments to The Honorable Thomas W. Ruffner, Mayor, 28730 Ridge Road, Wickliffe, OH 44092.

City of Willoughby

Maps are available for inspection at 1 Public Square, Willoughby, OH 44094.
Send comments to The Honorable David E. Anderson, Mayor, City of Willoughby, 1 Public Square, Willoughby, OH 44094.

City of Willoughby Hills

Maps are available for inspection at 35405 Chardon Road, Willoughby Hills, OH 44094.

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

Send comments to The Honorable Kenneth Lorenz, Mayor, City of Willoughby Hills, 35405 Chardon Road, Willoughby Hills, OH 44094.

City of Willowick

Maps are available for inspection at 31230 Vine Street, Willowick, OH 44095.
Send comments to The Honorable Richard Bonde, Mayor, 30435 Lakeshore Boulevard, Willowick, OH 44095.

Unincorporated Areas of Lake County

Maps are available for inspection at 550 Blackbrook Road, Painesville, OH 44077.
Send comments to Mr. Daniel P. Troy, Lake County Commissioner, 105 Main Street, 4th Floor, PO Box 490, Painesville, OH 44077.

Village of Fairport Harbor

Maps are available for inspection at 220 Third Street, Fairport Harbor, OH 44077.
Send comments to The Honorable Frank J. Sarosy, Mayor, Village of Fairport Harbor, 220 Third Street, Fairport Harbor, OH 44077.

Village of Grand River

Maps are available for inspection at 205 Singer Avenue, PO Box 216, Grand River, OH 44045–0216.
Send comments to The Honorable Christopher W. Conley, Mayor, Village of Grand River, 205 Singer Avenue, PO Box 216, Grand River, OH 44045–0216.

Village of Lakeline

Maps are available for inspection at 33512 Lake Shore Boulevard, Lakeline, OH 44095.
Send comments to The Honorable Mike Rayl, Mayor, Village of Lakeline, 33512 Lake Shore Boulevard, Lakeline, OH 44095.

Village of Madison

Maps are available for inspection at 126 West Main Street, Madison, OH 44057.
Send comments to The Honorable Michael Evangelifta, Mayor, Village of Madison, 126 West Main Street, Madison, OH 44057.

Village of North Perry

Maps are available for inspection at 4449 Lockwood Road, North Perry, OH 44081.
Send comments to The Honorable Michael Zinn, Mayor, Village of North Perry, 4449 Lockwood Road, North Perry, OH 44081.

Village of Perry

Maps are available for inspection at 3758 Center Road, PO Box 100, Perry, OH 44081.
Send comments to The Honorable Laurence Logan, Mayor, Village of Perry, 3758 Center Road, PO Box 100, Perry, OH 44081.

Village of Timberlake

Maps are available for inspection at 11 East Shore Boulevard, Timberlake, OH 44095.
Send comments to The Honorable John P. Roskos, Mayor, Village of Timberlake, 11 East Shore Boulevard, Timberlake, OH 44095.

Village of Waite Hill

Maps are available for inspection at 7215 Eagle Road, Waite Hill, OH 44094.
Send comments to The Honorable Arthur D. Baldwin II, Mayor, Village of Waite Hill, 7215 Eagle Road, Waite Hill, OH 44094.

Erie County, Ohio, and Incorporated Areas

Boos Ditch	Approximately 400 feet from mouth	+576	+577	Unincorporated Areas of Erie County.
	Mouth at Lake Erie	+576	+577	
Hahn Creek	Mouth at Lake Erie	+576	+577	City of Huron.
	Downstream of Cleveland Road	+576	+577	
Huron River	Mouth at Lake Erie	+576	+577	City of Huron.
	Approximately 3,700 feet upstream of Norfolk Southern Corporation Railroad.	+576	+577	
Lake Erie	Entire Lake Erie coastline from the western City of Huron corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+576	+577	City of Huron.
	Entire Lake Erie coastline from the western City of Huron corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+586	+577	
	Entire Lake Erie coastline from the western City of Huron corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+591	+577	
	Entire Lake Erie coastline from the western City of Huron corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+591	+577	
	Entire Lake Erie coastline from the western City of Sandusky corporate limits to eastern corporate limits. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+576	+577	City of Sandusky.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
	Entire Lake Erie coastline from the western Village of Kelleys Island corporate limits to eastern corporate limits. Minor changes in floodplain boundaries.	+577	+578	Village of Kelleys Island.
	Entire Lake Erie coastline within Erie County. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+576	+577	Unincorporated Areas of Erie County.
	Entire Lake Erie coastline within Erie County. Spans multiple Lake Erie reaches. Minor changes in floodplain boundaries.	+576	+577	
Mudbrook Creek	Mouth at Huron River	+576	+577	City of Huron.
	Downstream of Mudbrook Road	+576	+577	
Plum Creek	Downstream of US6 Highway	+576	+577	Unincorporated Areas of Erie County.
	Mouth at Lake Erie	+576	+577	
Sawmill Creek	Approximately 1,900 feet upstream from mouth	+576	+577	Unincorporated Areas of Erie County.
	Mouth at Lake Erie	+576	+577	

City of Huron

Maps are available for inspection at Huron Township Station, 1820 Bogart Road, Huron, OH 48839.
Send comments to Mr. Andrew D. White, City Manager, City of Huron, 417 Main Street, PO Box 468, Huron, OH 44839.

City of Sandusky

Maps are available for inspection at 222 Meigs Street, Sandusky, OH 44870.

Send comments to Mr. Don Miears, Interim City Manager, City of Sandusky, 222 Meigs Street, Sandusky, OH 44870.

Unincorporated Areas of Erie County

Maps are available for inspection at 2900 Columbus Avenue, Sandusky, OH 44870.
Send comments to Mr. Alex MacNicol, Erie County Regional Planning Office, 2900 Columbus Avenue, Sandusky, OH 44870.

Village of Bay View

Maps are available for inspection at 304 East Bay View Drive, Sandusky, OH 44870.

Send comments to The Honorable Paul Snyder, Mayor, Village of Bay View, 304 E. Bay View Drive, Sandusky, OH 44870.

Village of Berlin Heights

Maps are available for inspection at 8 West Main Street, Berlin Heights, OH 44814.
Send comments to The Honorable Kelly Moon, Mayor, 8 West Main Street, PO Box 30, Berlin Heights, OH 44814.

Village of Castalia

Maps are available for inspection at 126 Main Street, Castalia, OH 44824.
Send comments to The Honorable Robert Wolfbrandt, Mayor, Village of Castalia, 126 Main Street, Castalia, OH 44824.

Village of Kelleys Island

Maps are available for inspection at Municipal Building of Kelleys Island, 121 Addison Street, Kelley Island, OH 43438.
Send comments to The Honorable Robert Quinn, Mayor, Village of Kelleys Island, 121 Addison Street, PO Box 469, Kelleys Island, OH 43438.

Village of Milan

Maps are available for inspection at 11 South Main Street, PO Box 1450, Milan, OH 44846.
Send comments to The Honorable Robert Bickley, Mayor, 11 South Main Street, PO Box 1450, Milan, OH 44846.

Lincoln County, South Dakota, and Incorporated Areas

Ninemile Creek	Just downstream from 274th Street	None	+1385	Town of Harrisburg.
Ninemile Creek	Just upstream from 272nd Street	None	+1472	Town of Tea.
	Approximately 320 feet downstream from Kevin Drive	None	+1477	
	Approximately 650 feet upstream from Ryan Drive	None	+1483	
Ninemile Creek	Just downstream from 273rd Street	None	+1311	Unincorporated Areas of Lincoln County.
	Just upstream from South Dakota Highway 115	None	+1411	
	1550 feet upstream from 469th Avenue	None	+1518	
Tributary	Approximately 2150 feet downstream from 475th Avenue.	None	+1391	Town of Harrisburg.
	Approximately 500 feet downstream from 475th Avenue at the Corporate Limit line.	None	+1400	
	Just downstream from 273rd Street	None	+1417	
	Just upstream from the confluence with Ninemile Creek.	None	+1387	Unincorporated Areas of Lincoln County.
	Approximately 2050 feet upstream from 273rd Street	None	+1425	
	Just downstream from 473rd Avenue	None	+1466	
Schindler Creek	Just upstream from the confluence with Ninemile Creek.	None	+1267	Unincorporated Areas of Lincoln County.
	Just downstream from 477th Avenue	None	+1394	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1150 feet upstream from 271st Street	None	+1452	
Spring Creek	Just upstream from the confluence with Big Sioux River.	None	+1269	Unincorporated Areas of Lincoln County.
	Just downstream from South Dakota Highway 11	None	+1368	
	Approximately 950 feet upstream from Cliff Avenue	None	+1461	
Tributary	Just upstream from the confluence with Spring Creek	None	+1346	Unincorporated Areas of Lincoln County.
	Just downstream from Cody Road	None	+1392	
	Just upstream from 269th Street	None	+1425	

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

ADDRESSES

Town of Harrisburg

Maps are available for inspection at P.O. BOX 26, Harrisburg, SD 57032.
Send comments to The Honorable Reed Ramstad, Mayor, Town of Harrisburg, P.O. BOX 26, Harrisburg, SD 57032.

Town of Tea

Maps are available for inspection at 600 East 1st Street, P.O. BOX 128, Tea, SD 57064.
Send comments to The Honorable John Lawler, Mayor, Town of Tea, P.O. BOX 128, Tea, SD 57064–0128.

Unincorporated Areas of Lincoln County

Maps are available for inspection at 224 West Ninth Street, Sioux Falls, SD 57104.
Send comments to Commissioner Michael Poppens, Commissioner, Lincoln County South Dakota, 100 East 5th Street, Canton, SD 57013.

Washington County, Utah, and Incorporated Areas

Ash Creek	Just upstream of the confluence with Virgin River	None	+3001	City of Toquerville, City of Laverkin.
	Approximately 2682 feet upstream of State Street	None	+3425	
Cottonwood Spring Wash	Just upstream of the confluence with Shoal Creek	None	+5309	Unincorporated Areas of Washington County, City of Enterprise.
	Approximately 16 feet downstream of SR–18	None	+5369	
Cottowood Wash	Just upstream of the confluence with Grapevine Pass Wash.	None	+2681	City of Washington.
	Approximately 361 feet downstream of State Street	None	+3086	
Coyote Wash	Approximately 105 feet upstream of Kayenta Dr	None	+2976	Unincorporated Areas of Washington County, Town of Ivins.
	Just upstream of the confluence with Santa Clara River.	None	+3388	
Fort Pierce Wash	At River Road	+2615	+2616	Unincorporated Areas of Washington County, City of St. George.
	Approximately 6.3 miles upstream of River Road	None	+2772	
Gould Wash	Just upstream of the confluence with Virgin River	None	+2898	Unincorporated Areas of Washington County, City of Hurricane.
	Approximately 2024 feet upstream of 180 West Street	None	+3290	
Grapevine Pass Wash	Just upstream of the confluence with Virgin River	None	+2641	City of Washington.
	Approximately 3165 feet downstream of I–15	None	+2962	
Kayenta Wash	Just upstream of the confluence with Santa Clara River.	None	+2962	Unincorporated Areas of Washington County, Town of Ivins.
	Approximately 21 feet downstream of Taviawk Drive	None	+3237	
Lava Flow Wash	Just upstream of the confluence with Tuacahn Wash	None	+2848	City of Santa Clara.
	Approximately 1100 feet upstream of Rachel Dr	None	+2918	
Middleton Wash	Just upstream of the confluence with Virgin River	+2578	+2583	City of St. George.
	Approximately 3155 feet upstream of I–15	+2893	+2910	
Mill Creek	Just upstream of the confluence with Virgin River	None	+2629	City of Washington, City of St. George.
	Approximately 3622 feet upstream of Buena Vista Boulevard.	None	+2866	
North Fork Virgin River	Just upstream of the confluence with East Fork Virgin River.	None	+3774	Town of Springdale.
	Approximately 3.75 miles upstream of the confluence with East Fork Virgin River.	None	+3921	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Sand Hollow Wash	At the confluence of Halfway Wash	+2689	+2690	City of Santa Clara, City of St. George.
	Approximately 2449 feet upstream of Tuacahn Parkway.	None	+2956	
Santa Clara River	Just upstream of the confluence with Virgin River	+2543	+2538	Unincorporated Areas of Washington County, City of Santa Clara, City of St. George.
	Approximately 1.2 miles upstream of Summerwood Circle.	+2788	+2785	
Shoal Creek	Approximately 2893 feet upstream of Center Street	None	+5308	Unincorporated Areas of Washington County, City of Enterprise.
	Approximately 1838 feet downstream of Center Street	None	+5321	
Spring Creek	Just upstream of the confluence with Shoal Creek	None	+5321	Unincorporated Areas of Washington County, City of Enterprise.
	Approximately 2314 feet upstream 100 S ST	None	+5346	
Tuacahn Wash	Approximately 492 feet downstream of Little League Drive.	None	+2782	City of Santa Clara, Town of Ivins.
	Approximately 1765 feet upstream of Tuacahn Drive	None	+3078	
Unnamed Wash 1 to Cottonwood Wash.	Just upstream of the confluence with Cottonwood Wash.	None	+2930	City of Washington.
	310 feet downstream of State Street	None	+3074	
Virgin River	Approximately 3303 feet dowstream of confluence with Big Valley Wash.	None	+2467	Unincorporated Areas of Washington County, City of St. George, City of Washington.
	Approximately 1.78 miles upstream of the confluence with Grapevine Pass Wash.	None	+2664	

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

ADDRESSES

City of Enterprise

Maps are available for inspection at 375 S 300 E, Enterprise, UT 84725.
Send comments to S. Lee Bracken, Mayor, PO Box 340, Enterprise, UT 84725.

City of Hurricane

Maps are available for inspection at 147 N 870 W, Hurricane, UT 84737

Send comments to Tom Hirschi, Mayor, 147 North 870 West, Hurricane, UT 84737.

City of Laverkin

Maps are available for inspection at 435 N Main, Laverkin, UT 84745.
Send comments to Doug Gubler, PW Director, 435 North Main, Laverkin, UT 84745.

City of Santa Clara

Maps are available for inspection at 2721 Santa Clara Dr, Santa Clara, UT 84765.
Send comments to Dennis Drake, Mayor, 2721 Santa Clara Drive, Santa Clara, UT 84765.

City of St. George

Maps are available for inspection at 175 E 200 N, St George, UT 84770.
Send comments to Dave Demas, City Engineer, 175 East 200 North, St. George, UT 84770.

City of Toquerville

Maps are available for inspection at 212 Toquer Blvd, Toquerville, UT 84774.
Send comments to Ken Powell, Mayor, P.O. Box 27, Toquerville, UT 84774.

City of Washington

Maps are available for inspection at 111 N 100 E, Washington, UT 84780.
Send comments to Terrill Clove, Mayor, 111 North 100 East, Washington, UT 84780.

Town of Ivins

Maps are available for inspection at 55 N Main, Ivins, UT 84738.
Send comments to Chuck Gillette, City Engineer, 55 North Main, Ivins, UT 84738.

Town of Springdale

Maps are available for inspection at 197 E Tabernacle St, St George, UT 84770.
Send comments to Rick Wixom, Town Manager, P.O. Box 187, Springdale, UT 84767.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Unincorporated Areas of Washington County				
Maps are available for inspection at 197 E Tabernacle St, St George, UT 84770.				
Send comments to Jim Eardley, County Commissioner, 197 E. Tabernacle, St. George, UT 84770.				

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

Dated: September 6, 2007.

David I. Maurstad,

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

[FR Doc. E7–18290 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 10 and 15

[USCG–2006–26202]

RIN 1625–AB10

Training and Service Requirements for Merchant Marine Officers

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to make administrative changes to the requirements for merchant mariner training and service. The proposed regulation would remove the expiration date of the radar-observer endorsement from the merchant mariner's license, allow for an apprentice mate of towing vessels to reduce sea-service time for mate (pilot) of towing vessels by completing additional approved training, and would provide an alternate path to mate (pilot) of towing vessels for master of steam or motor vessels not more than 200 gross register tons. These changes are intended to eliminate confusion and clarify training and service requirements.

DATES: Comments and related material must reach the Docket Management Facility on or before December 17, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2006–26202 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Deliveries may be made between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Luke Harden, CG–3PSO, Coast Guard, telephone 202–372–1408. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2006–26202), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000, or you may visit *http://dms.dot.gov.* See 65 FR 19477.

Public Meeting

We do not currently plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

The proposed revisions contained within this Notice of Proposed Rulemaking would (1) remove the expiration date of the radar-observer endorsement from the merchant

mariner's license, (2) allow for an apprentice mate of towing vessels to reduce required minimum sea-service time for mate (pilot) of towing vessels by completing additional approved training, and (3) provide an alternate path to mate (pilot) of towing vessels for a master of steam or motor vessels not more than 200 gross register tons (GRT).

(1) *Radar-observer endorsement:* A petition for rulemaking was submitted to the Coast Guard on March 10, 2005 by an industry working group called the Mid-America Regional Examination Center Workgroup. That petition identified problems associated with placing the expiration date for the radar-observer endorsement on the deck licenses for mariners operating vessels equipped with radar. The expiration date for the radar-observer endorsement may be different from the expiration date of the license itself, causing confusion as to the validity of the license.

A license is valid for a five-year period from the date it is issued by the Coast Guard. A radar-observer endorsement is also valid for five years, but that period begins after the month of issuance of the certificate of training from an approved course. For original licenses, unless the radar training certificate was issued the month before the license is issued, the expiration date of the radar endorsement will be different than the expiration date of the license. For license renewals, existing 46 CFR 10.480(k) provides a one time opportunity for a mariner to synchronize the expiration date of the radar endorsement with that of the license; however, for various reasons, many mariners do not avail themselves of this opportunity. Even if they do, 46 CFR 10.480(k) does not account for subsequent renewals which might also bring the dates out of alignment. The end result is that currently, many licenses have conflicting radar endorsement dates printed on them.

When conflicting dates appear on the license, confusion may result. Moreover, licenses may need to be prematurely renewed or reissued with the new radar observer endorsement date when the mariner obtains a new radar training certificate. If the radar observer endorsement date is not printed on the license, this can be avoided.

In reviewing the industry recommendation, it was recognized that changing the requirement would simplify the process of issuing the license and ease the burden on the Coast Guard, industry, and schools providing the training. Mariners would still be required to keep their radar-observer training current, but an endorsement evidencing that training would not be printed on their licenses. While they would still be required to hold current radar training certificates to man vessels equipped with radar, as specified in 46 CFR 15.815, they would have up to 48 hours to produce a copy of their certificate upon request of the Coast Guard or other appropriate federal agency.

(2) *Training programs:* A petition submitted by Kirby Towing Co. dated January 4, 2006, and the Report of the Licensing Implementation Working Group of the Towing Safety Advisory Committee (TSAC) dated October 3, 2005, identified difficulties with the service requirements for certification as a mate (pilot) of towing vessels. According to Kirby Towing Co. and TSAC, the requirements for an apprentice mate to become a mate (pilot) of towing vessels unnecessarily restrict and dampen the use of comprehensive long-term training programs.

The proposed regulatory change would provide mariners and their employers the flexibility to use training programs, which the Coast Guard could accept as meeting a portion of the service requirements for mate (pilot) of towing vessels.

(3) *Alternate progression:* A petition for rulemaking dated February 11, 2005 was submitted by Delta Towing Co. seeking an alternate path to obtain a license as mate (pilot) of towing vessels. The petition recommended a path that could relieve a shortage of qualified towing vessel personnel, as well as provide alternatives to companies that operate diverse fleets of vessels (*e.g.* offshore supply vessels (OSVs) and towing vessels).

The proposed regulatory change would provide a path for a master of steam or motor vessels not more than 200 GRT to qualify as a mate (pilot) of towing vessels while still demonstrating the experience and training that the regulations require. The alternate path would be available for any holder of a master of steam or motor vessels license, of any route and of any tonnage less than 200 GRT, except for the limited masters licenses specified in §§ 10.429 and 10.456 of this part.

(4) *Relationship to Other Rulemaking Projects:* On May 22, 2006, the Coast Guard published a notice of proposed rulemaking (NPRM) and on January 25, 2007, a supplementary notice of proposed rulemaking (SNPRM) entitled ''Consolidation of Merchant Mariner Qualification Credentials'' that among other things proposes to create a single merchant mariner's credential (MMC). See 71 FR 29462 and 72 FR 3605. That proposed rulemaking and this proposed rulemaking propose to make changes to some of the same regulatory text. This project and any possible future projects that would affect this regulatory text will be closely coordinated with the MMC project to ensure that there are no conflicts.

Discussion of Proposed Rule

This rulemaking proposes to do the following:

(1) *Radar-observer endorsement:* The rulemaking proposes to remove the requirement in 46 CFR 10.480(g) for the month and year of the expiration of the radar-observer endorsement to appear on the license. This change will eliminate the apparent early expiration of licenses when the radar-observer endorsement expires. The proposed regulatory change would not affect the actual expiration date of either the license or the endorsement, and would not affect the requirement that the mariner maintain a current training certificate. This change would only eliminate the requirement that the Coast Guard actually print the expiration date of the endorsement on the license.

This proposed rule would also remove 46 CFR 10.480(k). That paragraph permits a one time extension of the radar observer-endorsement expiration date for up to two years in order to synchronize that date with the license expiration date. If the expiration date of the radar-observer endorsement is removed from the license, only one expiration date would appear on the license, and synchronization for the purpose of avoiding confusion about the license expiration date would be unnecessary.

Removing this paragraph would allow mariners greater flexibility in managing their training schedules, and reduce the work backlog at the Coast Guard's regional examination centers. Mariners would be able to submit their licenses for renewal closer to the actual five-year expiration of the license, rather than the shorter period that resulted from the need to renew when the radar-observer endorsement expired. A longer effective renewal requirement is expected to reduce paperwork for both mariners and the Coast Guard.

We also propose revising 46 CFR 15.815 to require readily available evidence that each person holds a valid radar-observer certificate. Although the expiration date would no longer appear on the license, inspection teams, incident investigators, employers, and any appropriate Federal agency representative must still be able to see proof that a mariner is currently qualified as a radar-observer. This

change would facilitate enforcement of qualification requirements while providing mariners flexibility in the way they maintain evidence of training.

(2) *Training programs:* The service requirements in 46 CFR table 10.465–1 would be revised to permit mariners to count time successfully spent in Coast Guard-approved training programs toward the service requirements for mate (pilot) of towing vessels.

(3) *Alternate progression:* This proposed rule would add a new paragraph to 46 CFR 10.465 that would allow a master of steam or motor vessels of not more than 200 GRT to become a mate (pilot) of towing vessels under certain conditions. The paragraph would provide that the master of steam or motor vessels of not more than 200 GRT would need three years of service as master of steam or motor vessels less than 200 GRT, completion of a Towing Officer Assessment Record, completion of the towing vessel license (apprentice mate) exam, and 30 days of training and observation on a towing vessel on the route being sought.

In addition, the current regulatory language in 10.464(f) and 10.465(d) tries to describe a certain type of license, rather than using the actual endorsement title, which is unnecessarily confusing. This proposed rule would replace the descriptive terms ''inspected, self-propelled vessels'' with the actual endorsement title ''master of steam or motor vessels''.

Regulatory Evaluation

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

The proposed rule is divided into three elements: Radar endorsement, training programs, and alternate progression. This analysis will consider each of the three elements separately.

Radar Endorsement

The first element of the proposed rule would remove the expiration date of the radar-observer endorsement from the merchant mariner licenses. Currently 46 CFR 10.480(g) requires that the Coast Guard print both the endorsement and license expiration dates on the merchant mariner license.

Since the endorsement expiration date is tied to the date training is completed and the license is generally issued after the training is completed, the radar-observer-endorsement expiration date often precedes that of the license. The Coast Guard has determined that many people mistake the radar-observer-endorsement expiration date for that of the license itself. Removing the radar-observer endorsement expiration date would reduce confusion without affecting safety. Safety would remain unchanged because mariners and companies would still be required to keep training records current and readily available. The Coast Guard expects that the proposed rule would affect 7,660 radar-observer endorsements per year. This total includes both original and other than original endorsements.

Costs: Implementing this element of the proposed rule would impose no cost on the economy. This proposed rule contemplates no change in the fee paid for a merchant mariner license.

Benefits: The benefits of removing the expiration date would be modest, but noteworthy. The confusion caused by displaying the two expiration dates on the merchant mariner license could be denying many mariners the full five-year term of their licenses. The proposed rule would allow such mariners to enjoy the full five-year term of their mariner's license, giving them greater flexibility in deciding when to renew their licenses.

Training Programs

The second element of the proposed rule would allow applicants for a license as a mate (pilot) of towing vessels to apply time spent in Coast Guard-approved training courses or programs toward the minimum length of service requirement.

The Coast Guard's current regulations do not count time spent in a rigorous Coast Guard-approved towing training course toward the minimum service time requirements. Prospective pilots that elect to take such a course forego a chance to qualify for their licenses more quickly. The proposed changes would reduce this disincentive and therefore encourage more prospective towing vessel pilots to enroll in a course and more towing companies and training institutions to establish them. The Coast Guard believes that increasing the number of approved towing course graduates among towing vessel officers could increase overall towing safety.

Costs: This element of the rule unambiguously increases industry and mariner flexibility. It does not impose any cost on the economy because towing companies, mariners and training institutions would voluntarily exercise this flexibility only if they expected that it would make business sense for them to do so.

Benefits: The training program element of the proposed rule would reduce the opportunity cost for mariners of completing Coast Guard-approved training courses, leading to an increase in the number of prospective mates (pilots) of towing vessels enrolling in Coast Guard-approved towing courses. Such an increase would improve navigational safety.

Recent experience indicates that a substantial number of prospective towing pilots could take advantage of the increased flexibility. Currently the Kirby Marine Systems towing course is the only one approved by the Coast Guard. This course graduates about 10 to 20 students annually, compared to an annual average of 68 original towing licenses as mates (pilot) of towing vessels issued by the Coast Guard during 2003–05. Based upon discussions at the Towing Safety Advisory Committee, the Coast Guard believes that several towing companies would consider setting up towing courses if completion of the course could substitute for required service time toward a towing license.

The Coast Guard already allows applicants for certain engineering and deck licenses to substitute time spent in a Coast Guard-approved training course toward service time requirements, as described in 46 CFR 10.304, ''Substitution of training for required service, use of training-record books, and use of towing officer assessment records.'' The training programs element of the proposed rule would extend that flexibility to applicants for licenses as mate (pilot) of towing vessels.

Alternate Progression

The current rule describes two progressions to obtain a license as mate (pilot) of towing vessels. The traditional progression, described in 46 CFR 10.465(a) and 46 CFR table 10.465–1, requires an applicant for a license as mate (pilot) of towing vessels to complete at least 30 months of service, a Towing Officer Assessment Record (TOAR) or an approved course, and a 90-day period of training and observation on a towing vessel on the route for which the mariner seeks approval.

The second progression, in 46 CFR 10.465(d), allows individuals licensed as a mate or first-class pilot of inspected, self-propelled vessels greater than 200 GRT to obtain a license as a mate (pilot) of towing vessels on a particular route after completing a TOAR and a 30-day period of training

and observation on a towing vessel on that route. The third element of the proposed rule would allow individuals licensed for three years or longer as a master of steam or motor vessels not more than 200 GRT, including individuals licensed as a master of steam or motor vessels of any route and of any tonnage less than 200 GRT, except for the limited masters' licenses specified in §§ 10.429 and 10.456 of this part, to obtain a license as a mate (pilot) of towing vessels on a particular route after completing a TOAR, the appropriate apprentice mate exam, and a 30-day period of training and observation on a towing vessel on that route.

Costs: The costs of this change to industry or mariners would be zero, as this change would unambiguously increase flexibility for mariners. Mariners would voluntarily take advantage of this provision only if they would gain a net benefit from doing so.

Benefits: The Coast Guard has determined that this element of the proposed rule would not reduce maritime safety. Candidates eligible for a license as a mate (pilot) of towing vessels under this proposed rule change would, in fact, have the same level of knowledge as those seeking a license as a master of towing vessels because they would be required to pass the same apprentice mate exam. In addition such a candidate would have already served approximately five years (sixty months) as a licensed officer before receiving the endorsement. This period is twice as long as the Coast Guard currently requires for candidates seeking a license as a mate (pilot) of towing under the first progression. The second progression already allows mariners holding a license as a mate or first-class pilot of inspected, self-propelled vessels greater than 200 GRT to operate towing vessels on a route if they complete a TOAR as well as 30 days of training and observation on towing vessels on the desired route. The alternate progression element of the proposed rule would extend similar flexibility to a sufficiently experienced master of steam or motor vessels not more than 200 GRT.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–602), the Coast Guard is required to assess whether the proposed rule would exert a significant economic impact upon a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As explained previously in the ''Regulatory Evaluation'' section, the Coast Guard does not expect that the proposed rule will exert a significant economic impact upon operating companies, some of which are small entities. Therefore the Coast Guard does not expect the proposed rule to exert a significant impact upon small businesses. The Coast Guard likewise expects no significant economic impact upon not-for-profit organizations or government jurisdictions, as the proposed rule does not change any requirements for either.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Luke Harden, CG–3PSO, Coast Guard, telephone 202–372–1408. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or

more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we have determined that this rule should be categorically excluded under figure 2–1, paragraph (34)(c), of the Instruction from further environmental documentation. This proposed regulation concerns the training, qualifying, licensing and disciplining of maritime personnel. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects

46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 10 and 15 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Department of Homeland Security Delegation 0170.1. Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

2. Amend § 10.304 by adding new paragraph (j) to read as follows:

§ 10.304 Substitution of training for required service, use of training record books, and use of towing officer assessment records.

* * * * *

(j) Substitution of training in lieu of required service for a license as mate (pilot) of towing vessels is governed by § 10.465 and table 10.465–1 of this part.

3. In § 10.464—

a. Amend paragraph (b) by adding the following sentence to the end of the paragraph; and

b. In paragraph (f), introductory text, remove the words ''inspected, self-propelled'' and add, in their place, the words ''steam or motor'':

§ 10.464 Requirements for licenses as master of towing vessels.

* * * * *

(b) * * * Time of service requirements as an apprentice mate (steersman) of towing vessels may be reduced by an amount equal to the time specified in the approval letter for the completed Coast Guard-approved training programs.

* * * * *

4. In § 10.465—

a. Amend paragraph (a) by adding the following sentence to the end of the paragraph;

b. Revise table 10.465–1 to read as follows;

c. In paragraph (d), introductory text, remove the words ''inspected, self-propelled'' and add, in their place, the words ''steam or motor''; and

d. Redesignate existing paragraphs (e) and (f) as paragraphs (f) and (g) and add new paragraph (e) to read as follows:

§ 10.465 Requirements for licenses as mate (pilot) of towing vessels.

(a) * * * Time of service requirements as an apprentice mate (steersman) of towing vessels may be reduced by an amount equal to the time specified in the approval letter for the completed Coast Guard-approved training programs.

TABLE 10.465–1.—REQUIREMENTS FOR LICENSE AS MATE (PILOT [1]) OF TOWING VESSELS

Route endorsed	Total service [2]	TOS [3] on T/V as apprentice mate (steersman) [5]	TOS [3] on particular route	TOAR [4] or an approved course	30 Days of observation and training while holding master (limited) and pass a limited examination	Subordinate route authorized
1	2	3	4	5	6	7
(1) Oceans (O)	30	12 of 30	3 of 12	Yes	Yes	NC, GL–I
(2) Near-coastal (NC)	30	12 of 30	3 of 12	Yes	Yes	GL–I
(3) Great Lakes-Inland (GL–I).	30	12 of 30	3 of 12	Yes	Yes.	

TABLE 10.465–1.—REQUIREMENTS FOR LICENSE AS MATE (PILOT [1]) OF TOWING VESSELS—Continued

Route endorsed	Total service [2]	TOS [3] on T/V as apprentice mate (steersman) [5]	TOS [3] on particular route	TOAR [4] or an approved course	30 Days of observation and training while holding master (limited) and pass a limited examination	Subordinate route authorized
1	2	3	4	5	6	7
(5) Western Rivers (WR).	30	12 of 30	3 of 12	Yes	No (90-days service required).	

[1] For all inland routes, as well as Western Rivers, the license as pilot of towing vessels is equivalent to that as mate of towing vessels. All qualifications and equivalencies are the same.
[2] Service is in months unless otherwise indicated.
[3] TOS is time of service.
[4] TOAR is Towing Officers' Assessment Record.
[5] Time of service requirements as an apprentice mate (steersman) of towing vessels may be reduced by an amount equal to the time spent by a mariner to complete a training program approved by the Coast Guard if the authority for the reduction is provided in the letter from the Coast Guard approving the program.

* * * * *

(e) If you hold any license as a master of steam or motor vessels of any tonnage less than 200 GRT, except for the limited masters' licenses specified in 46 CFR 10.429 and 10.456, then you may obtain an endorsement as mate (pilot) of towing vessels by meeting the following requirements:

(1) Providing proof of 36 months of service operating under the authority of your existing license;

(2) Successfully completing the appropriate TOAR;

(3) Successfully completing the appropriate apprentice mate exam; and

(4) Having 30 days of training and observation on towing vessels for the route being assessed, except as noted in paragraph (b) of this section.

* * * * *

§ 10.480 [Amended]

5. Amend § 10.480 as follows:

a. In paragraph (f), remove ''Except as provided by paragraph (k) of this section''; and

b. Remove paragraphs (g) and (k), and redesignate paragraphs (h), (i), and (j) as (g), (h), and (i), respectively.

PART 15—MANNING REQUIREMENTS

6. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906 and 9102; and Department of Homeland Security Delegation No. 0170.1.

7. In § 15.815—

a. In paragraphs (a), (b), and (c), remove the words ''a valid endorsement'' and add, in their place, the words ''an endorsement''; and

b. Add new paragraphs (d) and (e) to read as follows:

§ 15.815 Radar observers.

* * * * *

(d) Each person who is required to hold a radar endorsement must have their certificate of training readily available to demonstrate that the endorsement is still valid.

(e) For the purposes of this section, ''readily available'' means that the mariner must carry either the certificate of training or a notarized copy onboard. Alternatively, the mariner must provide a copy of the certificate of training or notarized copy to the requesting entity within 48 hours. The requested material may be delivered either physically, electronically, or by facsimile.

Dated: September 7, 2007.

J.G. Lantz,

Acting Assistant Commandant for Prevention.

[FR Doc. E7–18191 Filed 9–14–07; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 72, No. 179
Monday, September 17, 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

Submission for OMB Review; Comment Request

September 11, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Weather Radio Transmitter Grant Program.

OMB Control Number: 0572–0124.

Summary of Collection: The National Weather Service operates an All Hazards Early Warning System that alerts people in areas covered by its transmissions of approaching dangerous weather and other emergencies. The National Weather Service can typically provide warnings of specific weather dangers up to fifteen minutes prior to the event. At present, this system covers all major metropolitan areas and many smaller cities and towns; however, many rural areas lack National Oceanic and Atmospheric Administration's Weather Radio and Alert System (NOAA) Weather Radio coverage. The Weather Radio Transmitter Grant Program will provide grant funds, for use in rural areas and communities of 50,000 or less inhabitants. The grant funds will be processed on a first-come basis until the appropriation is used in its entirety.

Need and Use of the Information: RUS will use the information from the submissions to determine the following: (1) That adequate coverage in the area does not already exist and that the proposed coverage will meet the needs of the community; (2) that design requirements are met; and (3) that the funds needed to complete the project are adequate based on the grant and the matching portion from the applicant.

Description of Respondents: Not for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 113.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 678.

Rural Utility Service

Title: High Energy Cost Grants and State Bulk Fuel Revolving Grant Programs.

OMB Control Number: 0572–0136.

Summary of Collection: The Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901 et seq.) was amended in November 2000 to create new grant and loan authority to assist rural communities with extremely high energy costs (Pub. L.106–472). This amendment gives authorization to Rural Utilities Service (RUS) to provide competitive grants for energy generation, transmission, or distribution facilities serving communities in which the national average is at least 275% for residential expenditure for home energy. All applicants are required to submit a project proposal containing the elements in the prescribed format.

Need and Use of the Information: USDA will collect information from applicants to confirm that the eligibility requirements and the proposals are consistent with the purposes set forth in the statute. Various forms and progress reports are used to monitor compliance with grant agreements, track expenditures of Federal funds and measure the success of the program. Without collecting the listed information, USDA will not be assured that the projects and communities served meet the statutory requirements for eligibility or that the proposed projects will deliver the intended benefits.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; and State, Local or Tribal Government.

Number of Respondents: 55.

Frequency of Responses: Recordkeeping: Reporting: On occasion.

Total Burden Hours: 1,228.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–18201 Filed 9–14–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0121]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fel-O-Vax® LvK/FIV Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has determined the regulatory review period for Fel-O-Vax® LvK/FIV Vaccine and is publishing this notice of that determination as required

by law. We have made this determination in response to the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that veterinary biologic.

DATES: We will consider all requests for revision of the regulatory review period determination that we receive on or before October 17, 2007. We will consider all due diligence petitions that we receive on or before March 17, 2008.

ADDRESSES: You may submit revision requests and due diligence petitions 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–2007–0121 to submit or view public comments and to view supporting and related materials available electronically. Information on using 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 request or petition (an original and three copies) to Docket No. APHIS–2007–0121, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that the request or petition refers to Docket No. APHIS–2007–0121.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Section Leader, Operational Support Section, Center for Veterinary Biologics, Policy Evaluation and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314.

For information concerning the regulatory review period determination, contact Dr. Patricia L. Foley, Center for Veterinary Biologics, Policy Evaluation and Licensing, VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232–5785, fax (515) 232–7120.

SUPPLEMENTARY INFORMATION: The provisions of 35 U.S.C. 156, ''Extension of patent term,'' provide, generally, that a patent for a product may be extended for a period of up to 5 years as long as the patent claims a product that, among other things, was subject to a regulatory review period before its commercial marketing or use. (The term ''product'' is defined in that section as ''a drug product'' [which includes veterinary biological products] or ''any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.'') A product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

The regulations in 9 CFR part 124, ''Patent Term Restoration'' (referred to below as the regulations), set forth procedures and requirements for the Animal and Plant Health Inspection Service's (APHIS) review of applications for the extension of the term of certain patents for veterinary biological products pursuant to 35 U.S.C. 156. As identified in the regulations, the responsibilities of APHIS include:

Assisting the Patent and Trademark Office of the U.S. Department of Commerce in determining eligibility for patent term restoration;

Determining the length of a product's regulatory review period;

If petitioned, reviewing and ruling on due diligence challenges to APHIS' regulatory review period determinations; and

Conducting hearings to review initial APHIS findings on due diligence challenges.

The regulations are designed to be used in conjunction with regulations issued by the Patent and Trademark Office concerning patent term extension, which may be found at 37 CFR 1.710 through 1.791.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For veterinary biologics, the testing phase begins on the date the authorization to prepare an experimental veterinary biologic became effective and runs until the approval phase begins. The approval phase begins on the date an application for a license was initially submitted for approval and ends on the date such license was issued. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award, APHIS' determination of the length of a regulatory review period for a veterinary biologic will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(5)(B).

APHIS recently licensed for production and marketing the veterinary biologic Fel-O-Vax® LvK/FIV (Feline Immunodeficiency-Leukemia Virus Vaccine, Killed Virus) Vaccine. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Fel-O-Vax® LvK/FIV Vaccine (U.S. Patent No. 5,510,106) from the Regents of the University of California, and the Patent and Trademark Office requested APHIS' assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 16, 2007, APHIS advised the Patent and Trademark Office that this veterinary biologic had undergone a regulatory review period and that the approval of Fel-O-Vax® LvK/FIV Vaccine represented the first permitted commercial licensing or use of the product. Subsequently, the Patent and Trademark Office requested that APHIS determine the product's regulatory review period.

APHIS has determined that the applicable regulatory review period for Fel-O-Vax® LvK/FIV Vaccine is 1,348 days. Of this time, 0 days occurred during the testing phase of the regulatory review period, and 1,348 days occurred during the approval phase. These periods were derived from the following dates:

1. The date the application for a license was initially submitted for approval under the Virus-Serum-Toxin Act: October 15, 1999. APHIS has verified the applicant's claim that the application was initially submitted on October 15, 1999.

2. The date the license was issued: June 23, 2003. APHIS has verified the applicant's claim that the license for the commercial marketing of the vaccine was issued on June 23, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,348 days of patent term extension.

Section 124.22 of the regulations provides that any interested person may request a revision of the regulatory

review period determination within 30 days of the date of this notice (see **DATES** above). The request must specify the following:

The identity of the product;

The identity of the applicant for patent term restoration;

The docket number of this notice; and

The basis for the request for revision, including any documentary evidence.

Further, under § 124.30 of the regulations, any interested person may file a petition with APHIS, no later than 180 days after the date of this notice (see **DATES** above), alleging that a license applicant did not act with due diligence in seeking APHIS approval of the product during the regulatory review period. The filing, format, and content of a petition must be as described in the regulations in ''Subpart D—Due Diligence Petitions'' (§§ 124.30 through 124.33).

Authority: 35 U.S.C. 156.

Done in Washington, DC, this 11th day of September, 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–18266 Filed 9–14–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lincoln National Forest; New Mexico; Perk-Grindstone III Hazardous Fuel Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement; Correction.

SUMMARY: On September 22, 2006, the **Federal Register** published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Perk-Grindstone III Hazardous Fuel Reduction Project on the Lincoln National Forest, Smokey Bear Ranger District (71 FR 55419–55421). That document estimated that the Draft Environmental Impact Statement would be available February 2007, and would require a single forest plan amendment, correction of both the estimated date and the number of forest plan amendments is necessary.

Correction: In the **Federal Register** of September 22, 2006, in FR Doc. 71–184, on page 55419, in the first column, correct the **DATES** caption, second sentence to read:

The draft EIS is expected to be available for public review in January 2008 and the final EIS is expected to be published in June 2008.

In the **Federal Register** of September 22, 2006, in FR Doc. 71–184, on page 55419, in the third column, additional information must be added to the Proposed Action caption, first and second paragraph to read:

Proposed forest management work includes noncommercial thinning, commercial thinning involving removal of logs and slash by ground-based skidding or helicopter, ground-based machine work and hand work to pile thinning slash, and slash-pile burning or broadcast burning to dispose of or reduce woody fuels. On existing roads used to support these treatments, maintenance work including forestry best management practices would be performed. Up to 14 miles of road may be constructed or reconstructed, these road will be developed to facilitate proper ground-based skidding and access log-landing areas. Upon completion of logging and other mechanized treatments, temporary roads would be rehabilitated and closed. The remaining roads, needed for long term access would be closed by installing gates or other barriers at road entrances to eliminate motor vehicle use on the road (Forest Plan, p. 47). Closed roads may be reopened when needed for subsequent fuel reduction or other management activities, and then closed following completion of that activity (Forest Plan, p. 37). Closed roads may be used as trails for hiking, mountain biking and horseback-riding. The proposed forest management treatments and roadwork integrated various detail design-features to conserve cultural or historical sites, air quality, soil, water quality, wildlife, native plants and trees, scenery, and recreation.

To achieve desired conditions for the area, the proposed action involves some removal of commercial-size trees from areas of protected habitat of the Mexican spotted owl, a threatened species. Under the current forest plan as amended, these treatments to reduce fuels near urban areas are anticipated; nonetheless, they are a departure from the forestwide standards and guidelines adopted to implement the recovery plan for this species. Additionally, the proposed action will remove canopy cover within Northern goshawk post-fledging areas. Northern goshawk is a Regional Forester sensitive species. These areas may not meet forest plan standards and guidelines for canopy cover. Forest plan standards and guidelines also restrict operation of wheeled of tracked logging equipment to slopes of less than 40%. Operation of logging equipment on slopes in excess of 40% is anticipated under one or more alternatives. Vegetative removal and road construction is likely to be clearly evident, for approximately 10 years, within the project area. The forest plan standards and guidelines for the Visual Quality Objective (VQO) within the project area specify that the area should be managed with a VQO of Retention. Under a Retention VQO, forest management activities may be visible but not clearly evident to the average viewer. Disturbances must appear to be from natural causes. Therefore, to ensure project consistency with the forest plan, the plan would be amended at the same time as and in conjunction with the approval of an action alternative, should one be selected, that involve similar departure form current standards and guidelines to conserve Mexican spotted owl, Northern goshawk, visual quality and limitations on activities on slopes over 40%. The plan amendments would be limited to apply only to the Perk-Grindstone III hazardous fuel reduction project area and its approved activities (36 CFR 219.8(e)).

FOR FURTHER INFORMATION CONTACT: Buck Sanchez, District Ranger, Smokey Bear Ranger District, Lincoln National Forest, 901 Mechem, Ruidoso, NM 88345, telephone (505) 257–4095.

Dated: September 10, 2007.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 07–4582 Filed 9–14–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on October 9, 2007 at the Sierra Nevada College, 999 Tahoe Boulevard, Incline Village, NV 89451. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held October 9, 2007, beginning at 1 p.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at Sierra Nevada College, 999 Tahoe Boulevard, Incline Village, NV 89451.

FOR FURTHER INFORMATION CONTACT: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) Discussion of possible changes to the Implementation Agreement, Southern Nevada Public Land Management Act of 1998 Public Law 105–263 (as amended); (2) an update on the Environmental Improvement Program; and (3) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: September 11, 2007.

Terri Marceron,

Forest Supervisor.

[FR Doc. 07–4581 Filed 9–14–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Monongahela National Forest, USDA Forest Service.

ACTION: Notice of new fee site.

SUMMARY: The Monongahela National Forest is planning to charge a $5.00 fee for overnight camping at the numbered campsites located along the Williams and Cranberry Rivers. These campsites are located on the Gauley and Marlinton Ranger Districts. These campsites include the basic amenities found in rustic Forest Service campgrounds. These campsites have been in use for many years, and were previously free-of-charge. Fee collections will be used to maintain and operate these campsites.

DATES: The proposed fee will be established in April of 2008.

ADDRESSES: Forest Supervisor, Monongahela National Forest, 200 Sycamore Street, Elkins, West Virginia, 26241.

FOR FURTHER INFORMATION CONTACT: Tim Henry, Recreation Forester, 304–799–4334.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, P.L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Public notification has been conducted on-site and in the local region. Comments received have been supportive of this proposal. People using these campsites desire to see the sites well maintained and available for recreational use. a market analysis indicates that the $5/per night fee is both reasonable and acceptable for this sort of recreation experience.

Dated: August 20, 2007.

Clyde Thompson,

Monongahela National Forest Supervisor.

[FR Doc. 07–4580 Filed 9–14–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–806, A–570–919]

Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide from Australia and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla at (202) 482–3477 (Australia) or Eugene Degnan at (202) 482–0414 (People's Republic of China), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION

The Petitions

On August 22, 2007, the Department of Commerce (Department) received petitions concerning imports of electrolytic manganese dioxide (EMD) from Australia and the People's Republic of China (PRC) filed in proper form by Tronox LLC (the petitioner). See *Antidumping Duty Petitions on Electrolytic Manganese Dioxide from Australia and the People's Republic of China* (August 22, 2007) (Petitions). The petitioner is a domestic producer of EMD. On August 29, 2007, the Department issued a request for additional information and clarification of certain areas of the Petitions. On September 4, 2007, in response to the Department's request, the petitioner filed an amendment to the Petitions. See *Electrolytic Manganese Dioxide from Australia and the People's Republic of China; Petitioner's Response to the August 19, 2007, Questions from the U.S. Department of Commerce* (September 4, 2007) (Supplemental Responses).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of EMD from Australia and the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States. The petitioner also alleges that sales of EMD by the Australian producer to Japan were made at prices below the cost of production (COP).

The Department finds that the petitioner filed these Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the initiation of the antidumping–duty investigations that the petitioner is requesting. See the ''Determination of Industry Support for the Petitions'' section below.

Period of Investigation

Because the Petitions were filed on August 22, 2007, the anticipated period of investigation (POI) for Australia is July 1, 2006, through June 30, 2007. The anticipated POI for the PRC is January 1, 2007, through June 30, 2007. See 19 CFR 351.204(b).

Scope of the Investigations

The merchandise covered by each of these investigations includes all manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written

description of the scope of these investigations is dispositive.

Comments on Scope of Investigations

We are setting aside a period for interested parties to raise issues regarding product coverage. See, *e.g., Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of signature of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers who support the petition account for (i) at least 25 percent of the total production of the domestic like product and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers accounting for more than 50 percent of the total production of the domestic like product, the Department shall (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A) or (ii) determine industry support using a statistically valid sampling method if there is a large number of producers in the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information because the Department determines industry support at the time of initiation. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law. *See Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), aff'd 865 F.2d 240 (CAFC 1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like–product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that EMD constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like–product analysis in these cases, see the *Antidumping Duty Investigation Initiation Checklist: Electrolytic Manganese Dioxide from Australia (Australia Initiation Checklist)* at Attachment II and the *Antidumping Duty Investigation Initiation Checklist: Electrolytic Manganese Dioxide from the People's Republic of China (PRC) (PRC Initiation Checklist)* at Attachment II, on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

Our review of the data provided in the Petitions, Supplemental Responses, and other information readily available to the Department indicates that the petitioner has established industry support. With regard to the Australia Petition, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers who support the Australia Petition account for at least 25 percent of the total production of the domestic like product. Second, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers who support the Australia Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Australia Petition. Because the Petition established support from domestic producers accounting for more than 50 percent of the total production of the domestic like product, the Department is not required to take further action in order to evaluate industry support, *e.g.*, polling. See section 732(c)(4)(D) of the Act. Accordingly, the Department determines that the Australia Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See *Australia Initiation Checklist* at Attachment II.

With regard to the PRC Petition, based on information provided in the Petition, we determine that the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers who support the PRC Petition account for at least 25 percent of the total production of the domestic like product. The Petition did not establish support from domestic producers accounting for more than 50 percent of the total production of the domestic like product, however, and the Department was required to take further action in order to evaluate industry support. See section 732(c)(4)(D) of the Act. In this case, the Department was able to rely on other information, in accordance with section 732(c)(4)(D)(i) of the Act, to determine industry support. See *PRC Initiation Checklist* at Attachment II. Based on information provided in the Petition and other submissions, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers who support the PRC Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the PRC Petition. Accordingly, the Department determines that the PRC Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See *PRC Initiation Checklist* at Attachment II.

The Department finds that the petitioner filed the Petitions on behalf of the domestic industry in accordance with section 732(c)(4)(A) of the Act. The petitioner is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient

industry support in favor of the initiation of the antidumping duty investigations. See *Australia Initiation Checklist* at Attachment II and *PRC Initiation Checklist* at Attachment II.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value. The petitioner contends that the industry's injured condition is illustrated by reduced market share, lost sales, smaller production, reduced capacity, a lower capacity–utilization rate, fewer shipments, underselling, price depression or suppression, lost revenue, decline in financial performance, and increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See *Australia Initiation Checklist* at Attachment III and *PRC Initiation Checklist* at Attachment III.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate investigations of imports of EMD from Australia and the PRC. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the *Australia Initiation Checklist* and *PRC Initiation Checklist*. We corrected certain information in the petitioner's margin calculations and these corrections are set forth in detail in the *Initiation Checklists*. Should the need arise to use any of this information as facts available under section 776 of the Act, we will re–examine this information and may revise the margin calculations if appropriate.

Alleged U.S. Price and Normal Value: Australia

The petitioner calculated a single export price using the POI–average unit customs values (AUVs) for U.S. import data, as reported on the ITC's Dataweb for the POI. The petitioner deducted an amount for foreign inland–freight costs. See Petition at Exhibit 11, Supplemental Responses at Exhibit R, and *Australia Initiation Checklist*.

In calculating the export price, the petitioner relied exclusively on AUV data with respect to U.S. imports from Australia under the HTSUS number 2820.10.00.00. This HTSUS number is a ''basket category'' as it includes both subject EMD and non–subject chemical manganese dioxide (CMD) and natural manganese dioxide (NMD). The petitioner used PIERS data to demonstrate that the imports under HTSUS number 2820.10.00.00 are in fact overwhelmingly subject merchandise because PIERS provides more specific product–identification information than official U.S. Census data as reported on the ITC's Dataweb import statistics (Dataweb). See Petitions at Exhibit 10. In addition, the petitioner provided information that indicates that there are no producers of CMD or NMD in Australia and that the majority of imports under this HTSUS number are from a company that only produces EMD. See Petitions at Exhibit 3. Therefore, in this case, we find that the petitioner has provided information on the record that supports its position that the overwhelming percentage of the imports from Australia are, in fact, within the scope of the investigation. As such, we are able to conclude that most, if not all, of the imports from Australia under this HTSUS number are EMD and are, therefore, adequate figures upon which to base export prices for Australia.

With respect to normal value, the petitioner provided information that there were no sales in commercial quantities of EMD in the home market during the POI and that home–market prices were not reasonably available. *Id.* The petitioner proposed Japan as the largest third–country comparison market and demonstrated that Japan is a viable third–country market. See Petitions at Exhibit 15. The petitioner provided Global Trade Atlas EMD import data for exports from Australia into Japan and compared them with U.S. EMD import data for imports from Australia. According to these figures, the sales volume to Japan was greater than five percent of the sales volume to the United States. The petitioner compared third–country prices with an estimate of the cost of producing EMD in powder form by Delta EMD Australia Pty Ltd. (Delta). Because these data indicate that sales of EMD were made at prices below the product's COP, the petitioner requests that the Department initiate a cost investigation of Delta.

The petitioner has provided information demonstrating reasonable grounds to believe or suspect that sales of EMD from Australia to Japan were made at prices below the fully absorbed COP within the meaning of section 773(b) of the Act and has requested that the Department conduct a country–wide sales–below-cost investigation. See our analysis of the allegation below. An allegation of sales below cost in a petition does not need to be specific to individual exporters or producers. See, *e.g.*, Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103 316, Vol. 1, at 833 (1994). Thus, the Department will consider allegations of below–cost sales in the aggregate for a foreign country. *Id.* Further, section 773(b)(2)(A) of the Act requires that the Department have ''reasonable grounds to believe or suspect'' that below–cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below–cost prices. See section 773(b)(2)(A)(i) of the Act.

The Department has calculated a country–specific COP for EMD in Australia. Based upon a comparison of sales prices of EMD in Japan and the country–specific cost of producing the product, we find reasonable grounds to believe or suspect that sales of EMD produced in Australia and sold in Japan were made at prices below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country–wide cost investigation with regard to sales of EMD from Australia to Japan. If we determine during the course of this investigation that the home market, *i.e.*, Australia, is viable or that Japan is not the appropriate third–country market upon which to base normal value, our initiation of a country–wide cost investigation with respect to sales to Japan will be rendered moot. Because the petitioner alleged sales below cost pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioner also based normal value for sales of EMD on constructed value.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), selling, general, and administrative expenses (SG&A), financial expenses, and packing expenses. To calculate the COM, the petitioner relied on its own costs during the 2006 fiscal year, adjusted for known differences between the costs in the United States and the costs in Australia. The petitioner obtained all of the cost differences between the United States and Australia that were used to calculate the COM from public sources. The petitioner used its own factory–

overhead costs (FOH) as a conservative estimate of the Australian FOH. This is because the petitioner's facilities are older than Delta's and would thus likely have lower depreciation. Also, the petitioner states that, according to Delta's annual report, it has limited production in Australia, which would increase Delta's actual per–unit cost of FOH.

Because Delta's unconsolidated financial statements were not reasonably available, the petitioner used the financial statements of an Australian zinc producer because, it asserts, zinc undergoes a production process similar to EMD. The petitioner calculated SG&A and profit ratios using the 2006 consolidated financial statements of Zinifex Ltd. (Zinifex), an Australian conglomerate that has mining, smelting, and alloy segments that produce zinc. The petitioner calculated a financial–expense ratio based on the 2006 consolidated financial statements of Delta's parent company, Delta PLC. Where the petitioner used constructed value to determine normal value, it added an amount for profit from Zinifex's financial statements.

We adjusted the petitioner's calculation of SG&A and profit ratios by using information from Delta PLC's consolidated financial statement pertinent to the Australian EMD segment of its business. We used Delta PLC's financial records because these records included Delta's actual costs of producing the merchandise under consideration. See *Australia Initiation Checklist* for a full description of the petitioner's methodology and the adjustments we made to those calculations.

Alleged U.S. Price and Normal Value: The People's Republic of China

The petitioner based its U.S. price calculation on the POI–AUVs of U.S. imports from the PRC under HTSUS number 2820.10.00.00, as reported on the ITC's Dataweb for the POI. As noted above in the ''Alleged U.S. Price and Normal Value: Australia'' subsection, the petitioner demonstrated, using PIERS data, that the overwhelming percentage of the imports into the United States from the PRC were of subject EMD. The petitioner calculated an average Net U.S. Price for PRC alkaline–grade EMD by subtracting an estimate of foreign inland–freight costs from the AUV of imports for the POI. See *PRC Initiation Checklist* at 5.

Because the Department considers the PRC to be a non–market-economy country (NME), the petitioner constructed normal value based on the factors–of-production methodology pursuant to section 773(c) of the Act. Recently, the Department examined the PRC's market status and determined that NME status should continue for the PRC. See *Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, Regarding the People's Republic of China Status as a Non–Market Economy*, dated August 30, 2006. (This document is available online at http://ia.ita.doc.gov/download/prc–nme-status/prc–lined-paper–memo–08302006.pdf.) In addition, in two recent investigations, the Department also determined that the PRC is an NME country. See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007), and *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The presumption of the NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product is based appropriately on factors of production valued in a surrogate market–economy country in accordance with section 773(c) of the Act. During the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The petitioner asserts that India is the most appropriate surrogate country for the PRC because India is a significant producer of comparable merchandise and at a level of economic development comparable to the PRC. See Petition at 23. Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate–country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value the factors of production within 40 calendar days after the date of publication of the preliminary determination.

The petitioner provided dumping–margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. The petitioner calculated normal value for the U.S. price discussed above based on its own consumption rates for producing alkaline–grade EMD which it stated should be similar to the consumption of PRC producers. The petitioner used its own consumption figures for the period covering July 1, 2006, through December 31, 2006. See Petitions at 23–24 and Exhibits 22 and 27, Attachment B. The petitioner states that, while the producer in the United States uses only manganese dioxide ore to produce EMD, producers in the PRC use both manganese dioxide ore and manganese carbonate ore to produce EMD. See Petitions at 23–24 and Exhibit 3. The petitioner explains, however, that, because it does not have reliable usage–rate data for PRC carbonate ore and because the petitioner reasonably believes that several producers/exporters in the PRC use manganese dioxide ore to manufacture EMD, the petitioner's allegations are based on its own usage rate for manganese dioxide ore. *Id.* The petitioner stated that it made no adjustments to the normal–value calculations because no known material differences exist between its production process in the United States and the manufacturing experience in the PRC. See Supplemental Responses at 8 and Exhibit A. Thus, the petitioner has assumed, for purposes of the Petitions, that producers in the PRC use the same inputs in the same quantities as those it uses.

For the normal–value calculations, pursuant to section 773(c)(4) of the Act, the petitioner used surrogate values from a variety of sources, including Monthly Statistics of Foreign Trade of India, Volumes I and II, Directorate General of Commercial Intelligence & Statistics (Monthly) (MSFTI), the Department's NME Wage Rate for the PRC, the Department's factor–valuation memoranda from other NME proceedings, and publicly available financial statements, to value the factor of production (FOP). See Petitions at 24 and Supplemental Responses at Exhibit G. The petitioner converted the inputs valued in Indian rupees to U.S. dollars based on the average rupee/U.S. dollar exchange rate for the POI, as reported on the Department's website at http://ia.ita.doc.gov/exchange/index.html. See Supplemental Responses at 4 and Exhibits F and G.

For manganese dioxide ore, the main raw material in the production of EMD, the petitioner provided a surrogate value based on the input price paid by Eveready Industries India, Ltd. (Eveready India), an Indian

manufacturer of the subject merchandise, as reflected in Eveready India's 2006 financial statements. See Petitions at 24, footnote 47. For other inputs, *e.g.*, sulfuric acid, caustic soda, hydrogen sulfide, etc., the petitioner provided surrogate values based on pricing information from the World Trade Atlas. See Petitions at 24 and Supplemental Responses at Exhibits G and M. With regard to energy (electricity), the petitioner provided a surrogate value using the Department's *Factors of Production Valuation Memorandum for the Preliminary Results of Partial Rescission of the Fourth Antidumping Duty Administrative Review and Eighth New Shipper Review of Honey from the People's Republic of China* (December 21, 2006). See Petitions at Exhibit 21 and Supplemental Responses at Exhibit G. In addition, the petitioner provided a surrogate value for natural gas, a second energy source, using pricing information from the Gas Authority of India website. See Supplemental Responses at 5. Labor was valued using the expected wage rate for the PRC provided by the Department. See Petitions at 24 and Supplemental Responses at Exhibit G. Additionally, the petitioner explained that, where Indian surrogate values were not readily available and the costs of such factors were insignificant, it applied a ''zero'' value. See Petitions at 24 and Supplemental Responses at 5 and Exhibit G.

For the normal–value calculations, the petitioner derived the figures for FOH, SG&A, and profit from the financial ratios of Eveready India and Manganese Ore (India) Limited (MOIL), two Indian producers of merchandise that is either identical or similar to the domestic like product. The financial statements that the petitioner provided covered the period of April 2005 to March 2006. Additionally, the petitioner calculated a simple average of the two companies' financial ratios for purposes of the Petition. Further, because Eveready India did not earn a profit while MOIL earned a profit, the petitioner calculated normal value using the profit ratio of MOIL, not Eveready India. See Supplemental Responses at 7 and Exhibit G.

Since Eveready India's financial statement did not report a profit, we have determined not to use Eveready India in our calculation of surrogate financial ratios for purposes of this initiation. It is the Department's practice to disregard financial statements with zero profit when there are financial statements of other surrogate companies that have earned profit on the record. See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review* (signed on September 5, 2007; expected publication on September 12, 2007, in the **Federal Register**) and the Accompanying Issues and Decision Memorandum at Comment 2, section B. Based on our review of the information contained in the Petitions, we recalculated the surrogate financial ratios for the PRC using MOIL's financial information for material, labor, and energy (ML&E), FOH, SG&A, and profit. Although the petitioner calculated MOIL's financial ratios based on MOIL's consolidated financial statement, we calculated the ML&E, FOH, and profit ratios using the financial statement of MOIL's EMD division. Because MOIL did not have specific information regarding SG&A, we continued to use the consolidated financial statement to calculate the surrogate SG&A expense. We then calculated the profit ratio using the EMD division values for ML&E and FOH (*i.e.*, COM) plus the SG&A amount (calculated as the SG&A ratio times the COM), and the EMD division profit value. We did not make any other adjustment to the normal value as calculated by the petitioner.

Fair–Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of EMD from Australia and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price to constructed value that we revised as discussed above and calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margin for EMD from Australia is 52.94 percent. Based on comparisons of export price to normal value that we revised as discussed above and calculated in accordance with section 773(c) of the Act, the estimated dumping margin for EMD from the PRC is 133.76 percent.

Initiation of Antidumping Investigations

Based upon the examination of the Petitions on EMD from Australia and the PRC, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of EMD from Australia and the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205((b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Separate Rates

The Department modified the process by which exporters and producers may obtain separate–rate status in NME investigations. See Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries (April 5, 2005) (*Separate Rates and Combination Rates Bulletin*), available on the Department's website at http://ia.ita.doc.gov/policy/bull05–1.pdf. The process requires the submission of a separate–rate status application. Based on our experience in processing the separate–rate applications in the following antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See, e.g., Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off–the-Road Tires from the People's Republic of China*, 72 FR 43591, 43594–95 (August 6, 2007) (*Tires from the PRC*). The specific requirements for submitting the separate–rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at http://ia.ita.doc.gov/ia–highlights-and–news.html on the date of publication of this initiation notice in the **Federal Register**. The separate–rate application is due no later than November 9, 2007.

Respondent Selection and Quantity and Value Questionnaire

In prior NME investigations, it has been the Department's practice to request quantity and value information from all known exporters identified in the PRC Petition. See, *e.g., Tires from the PRC*, 72 FR at 43595. For this investigation, because the HTSUS number 2820.10.00.00, as discussed above in the ''Scope of the Investigation,'' provides comprehensive coverage of imports of EMD, the Department expects to select respondents in this investigation based on U.S. Customs and Border Protection (CBP) data of U.S. imports under HTSUS number 2820.10.00.00 during the POI.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The

Separate Rates and Combination Rates Bulletin, at 6, explains that, while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the POI. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the POI. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the POI.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petitions has been provided to representatives of the governments of Australia and the PRC. We will attempt to provide a copy of the public version of the Petitions to all exporters named in the Petitions, as provided for in 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than October 9, 2007, whether there is a reasonable indication that imports of EMD from Australia and the PRC are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: September 11, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–18257 Filed 9–14–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers from the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Irene Gorelik, 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) 482–1394 or (202) 482–6905, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On July 31, 2007, the Department of Commerce (''Department'') received a petition concerning imports of steel wire garment hangers from the People's Republic of China (''PRC'') (''Petition'') filed in proper form by M&B Metal Products Company, Inc. (''Petitioner''). In accordance with section 732(b) of the Tariff Act of 1930, as amended (''Act''), Petitioner alleges that imports of steel wire garment hangers from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

On August 3, 2007, the Department issued a request for additional information and clarification of certain areas of the Petition. Based on the Department's request, Petitioner filed its response on August 8, 2007. On August 16, 2007, the Department issued polling questionnaires to the domestic industry. In addition, the Department extended the initiation deadline because, pursuant to section 732(c)(1)(B) of the Act, the Department determined that it needed to poll the domestic industry to determine support for the Petition. *See Steel Wire Garment Hangers from the People's Republic of China: Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petition*, 72 FR 46606 (August 21, 2007) (''*Extension of Initiation Deadline*'').[1]

On August 17, 2007, the Department issued a second request for additional information and clarification of certain areas of the Petition, to which Petitioner responded on August 27, 2007.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) and (D) of the Act, and has demonstrated sufficient industry support with respect to the antidumping duty investigation that Petitioner is requesting that the Department initiate (*see* ''Determination of Industry Support for the Petition'' section below). The period of investigation (''POI'') is January 1, 2007, through June 30, 2007. *See* 19 CFR 351.204(b).

Scope of Investigation

The merchandise that is subject to this investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of this investigation are wooden, plastic, and other garment hangers that are classified under separate subheadings of the Harmonized Tariff Schedule of the United States (''HTSUS''). The products subject to this investigation are currently classified under HTSUS subheading 7326.20.0020. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Comments on the Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of signature of this notice.

[1] Twenty days from the original deadline is September 9, 2007. However, Department practice dictates that where a deadline falls on a weekend, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Act,* 70 FR 24533 (May 10, 2005).

Comments should be addressed to Import Administration's Central Records Unit (''CRU''), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230 - Attention: Julia Hancock and Irene Gorelik, Room 2814B. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of steel wire garment hangers to be reported in response to the Department's antidumping questionnaire. For example, we are considering whether physical characteristics such as steel grade, types of steel wire and/or steel wire rod, steel wire gauge, hanger length, whether or not painted, type of latex, fashioned with a strut or saddle, fashioned with paper covers or capes, and the bottom bar length are relevant. This information will be used to identify the key physical characteristics of the subject merchandise in order for respondents to report more accurately the relevant factors of production, in accordance with the Department's non–market economy (''NME'') methodology, as described in the ''Normal Value'' section below.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as the product reporting criteria. We note that it is not always appropriate to use all product characteristics as product reporting criteria.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaire, we must receive non–proprietary comments at the above–referenced address by October 1, 2007, and rebuttal comments must be timely filed by October 11, 2007.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that wire hangers constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* the *Antidumping Duty Investigation Initiation Checklist: Steel Wire Garment Hangers from the People's Republic of China (PRC)*, Industry Support at Attachment II (''*Initiation Checklist*''), on file in the CRU.

As stated above, on August 21, 2007, the Department published a notice extending the initiation deadline by 20 days to poll the domestic industry, in accordance with section 732(c)(4)D) of the Act, because it was ''not clear from the Petition whether the industry support criteria have been met...'' *See Extension of Initiation Deadline*, 72 FR at 46606. On August 16, 2007, we issued polling questionnaires to all known domestic producers of wire hangers identified in the Petition and by the Department's research. The questionnaires are on file in the CRU. For a detailed discussion of the responses received, *see Initiation Checklist* at Attachment II.

Based on an analysis of the data collected from polling the domestic industry, we determine that the domestic producers or workers who support the Petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, given that Petitioner and supporters of the Petition represent more than 50 percent of the production of the domestic like product provided by that portion of the industry expressing support or opposition to the Petition, the requirements of section 732(c)(4)(A)(ii) of the Act are also met. Accordingly, we determine that this Petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Initiation Checklist* at Attachment II.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C) and (D) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation that it is requesting the Department initiate. See Initiation Checklist at Attachment II.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured by reason of the imports of the subject

merchandise sold at less than NV. Petitioner contends that the industry's injured condition is illustrated by reduced market share, production, capacity and capacity utilization, shipments, by underselling and price depressing and suppressing effects, by lost revenue and sales, by reduced employment, by decline in financial performance, and by an increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at Attachment III.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of steel wire garment hangers from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the *Initiation Checklist. See Initiation Checklist.* Should the need arise to use any of this information as facts available, pursuant to section 776 of the Act, in our preliminary or final determination, we will reexamine the information and revise the margin calculations, if appropriate.

Export Price

Petitioner relied on 12 U.S. prices for steel wire garment hangers manufactured in the PRC and offered for sale in the United States. The prices quoted were for four different types of steel wire garment hangers falling within the scope of the this Petition, for delivery to the U.S. customer within the POI. Petitioner deducted from the prices the costs associated with exporting and delivering the product, including ocean freight and insurance charges, and U.S. duty, port and wharfage fees. *See Initiation Checklist.* Petitioner provided declarations indicating the importer profit margin and based international freight on its knowledge and experience. *See* Petition at Exhibit 36, and Supplement to the Petition, dated August 8, 2007, at pages 16–17. Additionally, Petitioner deducted from the prices a U.S. credit adjustment using the average prime rate for the POI from the U.S. Federal Reserve, at http://www.federalreserve.gov. *See Initiation Checklist*, at Attachment V; Supplement to the Petition, dated August 27, 2007, at Attachment 3.

Petitioner also calculated a margin based on the weighted average unit value (''AUV'') data for the POI of imports from the PRC under HTSUS subheading 7326.20.0020, which contains only subject merchandise. Since the AUV for HTS 7326.20.0020 is on an FOB basis, there were no deductions made from the AUV to obtain the U.S. price.

Normal Value

Petitioner stated that the PRC remains an NME country and no determination to the contrary has yet been made by the Department. Recently, the Department examined the PRC's market status and determined that NME status should continue for the PRC. *See Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, Regarding the People's Republic of China Status as a Non–Market Economy*, dated May 15, 2006. (This document is available online at http://ia.ita.doc.gov/download /prc–nme-status/prc–nme-status–memo.pdf.) In addition, in two recent investigations, the Department also determined that the PRC is an NME country. *See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007); *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner selected India as the surrogate country arguing that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market economy country that is at a level of economic development comparable to that of the PRC and there is publicly available information from India. *See* Petition at 39. Although India is not a significant producer of steel wire garment hangers, Petitioner argued that India is a significant producer of comparable steel wire products. *Id.* at 40. Moreover, Petitioner argued that other potential surrogate countries, *i.e.*, Egypt, Indonesia, the Philippines, and Sri Lanka, not only are not significant producers of steel wire garment hangers, but also are not significant producers of comparable steel wire products. Based on the information provided by Petitioner, we believe that the use of India as a surrogate country is appropriate for purposes of initiation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 days of the date of signature of the preliminary determination.

Petitioner provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioner calculated NVs for each U.S. price discussed above based on the consumption rates for producing steel wire garment hangers from a U.S. producer, which it stated should be similar to the consumption of PRC producers. *See* Petition at 41. Petitioner used this U.S. producer's consumption figures for October 2005 to September 2006. *See* Supplement to the Petition, dated August 8, 2007, at Exhibit I.

For the NV calculations, Petitioner was unable to obtain surrogate value figures contemporaneous with the POI for all material inputs, and accordingly relied upon the most recent information available. The source of this data is the World Trade Atlas compilation of Indian import statistics, which provided data through December 2006 at the time the Petition was filed. *See* Petition at Exhibit 29. To value certain factors of production, Petitioner used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, the Republic of Korea, and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly available, non–industry specific export subsidies. *See Final Results of Administrative Review and Final Results of New Shipper Review: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 72 FR 27287 (May 15, 2007), and accompanying Issues and Decision Memorandum at Comment 23. Additionally, Petitioner also

disregarded prices from North Korea, as the Department has in previous cases. *See Final Results of Antidumping Duty Administrative Review: Chrome–Plated Lug Nuts from the People's Republic of China*, 61 FR 58514 (November 15, 1996); *Preliminary Results of Antidumping Duty Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 71 FR 53387, 53399 (September 11, 2006).

For inputs valued in Indian rupees and not contemporaneous with the POI, Petitioner used information from the wholesale price indices (''WPI'') in India as published in International Financial Statistics by the International Monetary Fund to inflate the input prices. *See* Petition at Exhibits 33 and 34; Supplement to the Petition, dated August 27, 2007, at Attachment 1. In addition, Petitioner made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI, as reported on the Department's Web site at *http://ia.ita.doc.gov/exchange/index.html*.

Petitioner valued electricity in the production of steel wire garment hangers based on the Indian electricity rate as reported in the Key World Energy Statistics 2003, published by the International Energy Agency for the year 2000. *See* Petition at Exhibit 30 (*Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, Import Administration, from Matthew Renkey, Senior Analyst, RE: Antidumping Duty Administrative Review of Glycine from the People's Republic of China: Surrogate Values for the Preliminary Results*, dated April 2, 2007 (''*Glycine from the PRC*'')). Petitioner valued water using the value from *Glycine from the PRC*, which was calculated from the simple average rate of water for industrial use from various regions as reported by the Maharashtra Industrial Development Corporation at http://midcindia.org., dated June 1, 2003. *Id*. Petitioner valued natural gas using the 2005 rate for India published by the American Chemistry Council. *See* Petition at Exhibit 31. In each case, Petitioner adjusted these figures for inflation to the POI using WPI data. *See* Supplement to the Petition, dated August 27, 2007, at Attachments 1–2.

For the NV calculations, Petitioner calculated the surrogate financial ratios from the factory overhead, selling, general and administrative expenses, and profitability of an Indian manufacturer of steel fasteners, Lakshmi Precision Screws Ltd. (''Lakshmi''), which were used in the initiation of certain steel nails from the PRC. *See Initiation of Antidumping Investigation: Certain Steel Nails from the People's Republic of China and the United Arab Emirates*, 72 FR 38816 (July 16, 2007) (''*Initiation of Nails from the PRC*''); *see also* Petition at 42 and Exhibit 35. Petitioner claims that Lakshmi is an appropriate source for surrogate financial ratios because the company produces fabricated wire products that use the same input, steel wire, as steel wire garment hangers and the company's data is publicly available. Petitioner states that Lakshmi produces its finished downstream wire products in a manner similar to steel wire garment hangers, *i.e.*, specifically feeding the steel wire from coils into a machine where the wire is straightened, cut to the designated length, and formed into the finished product. *See* Supplement to the Petition, dated August 8, 2007, at 26. Petitioner stated that it was unable to find public financial statements from Indian steel wire garment hanger producers because India does not have a domestic garment hanger industry; therefore, Petitioner argues, Lakshmi provides the best information reasonably available as a surrogate for the production of steel wire garment hangers in the PRC. *See* Supplement to the Petition, dated August 8, 2007, at 19.

The Department finds that Petitioner's use of Lakshmi as the source for the surrogate financial expenses is appropriate for purposes of initiation. Specifically, the Department finds that Lakshmi is the best publicly available source for the surrogate financial ratios because Lakshmi produces wire products using a main input and a production process similar to that of steel wire garment hangers. However, the Department made minor modifications to the surrogate financial ratios calculated by Petitioner. Additionally, the Department made a minor modification to the weighted average NV for the POI of imports from the PRC under HTSUS subheading 7326.20.0020. As a result, the calculations for the 12 NVs, the weighted–average NV, and the resulting margin calculations changed slightly. *See Initiation Checklist* at Attachment V.

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of steel wire garment hangers from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for steel wire garment hangers from the PRC range from 203.02 to 618 percent. However, the Department may re–examine these carefully if it becomes necessary to consider the Petition margins for purposes of applying adverse facts available.

Initiation of Antidumping Investigation

Based upon the examination of Petition on steel wire garment hangers from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating this antidumping duty investigation to determine whether imports of steel wire garment hangers from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Separate Rates

The Department recently modified the process by which exporters and producers may obtain separate–rate status in NME investigations. *See* Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries (April 5, 2005) (*Separate Rates and Combination Rates Bulletin*), available on the Department's website at http://ia.ita.doc.gov/policy/bull05–1.pdf. The process requires the submission of a separate–rate status application. Based on our experience in processing the separate–rate applications in the following antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off–the-Road Tires from the People's Republic of China*, 72 FR 43591 (August 6, 2007) (''*Tires from the PRC*''); Initiation of Nails from the PRC, 72 FR 38816; *Initiation of Antidumping Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 72 FR 36663 (July 5, 2007); and *Initiation of Antidumping Duty Investigations: Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea*, 71 FR 68537 (November 27, 2006). The specific requirements for submitting the separate–rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at *http://ia.ita.doc.gov/ia–highlights-and–news.html* on the date of publication of this initiation notice in

the **Federal Register**. The separate–rate application is due no later than November 9, 2007.

Respondent Selection and Quantity and Value Questionnaire

In recent NME investigations, it has been the Department's practice to request quantity and value information from all known exporters identified in the petition. See *Initiation of Nails from the PRC*, 72 FR at 38821; *Tires from the PRC*, 72 FR at 43595. However, for this investigation, because HTSUS subheading 7326.20.00.20, as discussed above in the ''Scope of the Investigation,'' provides comprehensive coverage of imports of steel wire garment hangers, the Department expects to select respondents in this investigation based on U.S. Customs and Border Protection (''CBP'') data of U.S. imports under HTSUS subheading 7326.20.0020 from the POI.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The *Separate Rates and Combination Rates Bulletin*, states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin, at 6.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, copies of the public version of the Petition have been provided to the representative of the Government of the PRC. We will attempt to provide a copy of the public version of the Petition to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the International Trade Commission

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of steel wire garment hangers from the PRC are causing, or threatening to cause, material injury to a U.S. industry. *See* section 733(a)(2)(A)(i) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: September 10, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–18247 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off–the-Road Tires from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Toni Page, or Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3148, (202) 482–1398 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2007, the Department of Commerce (Department) initiated the countervailing duty investigation of certain new pneumatic off–the-road tires (OTR tires) from the People's Republic of China. *See Certain New Pneumatic Off–the-Road Tires From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 72 FR 44122 (August 7, 2007). Currently, the preliminary determination is due no later than October 3, 2007.

Postponement of Due Date for Preliminary Determination

On August 23, 2007, Titan Tire Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, AFL–CIO-CLC (collectively, petitioners), submitted a letter requesting that the Department postpone the preliminary determination of the countervailing duty investigation of OTR tires from the People's Republic of China by 65 days. Under section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until not later than the 130th day after the date on which the administering authority initiates an investigation if the petitioner makes a timely request for an extension of the period within which the determination must be made under section 703(b) of the Act. Pursuant to section 351.205(e) of the Department's regulations, the petitioners' request for postponement of the preliminary determination was made 25 days or more before the scheduled date of the preliminary determination. Accordingly, we are extending the due date for the preliminary determination by 65 days to December 7, 2007.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: September 11, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–18256 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Institute of Standards and Technology Performance Review Board Membership

The National Institute of Standards and Technology (NIST PRB) reviews

performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the NIST PRB and supersedes the list published in **Federal Register** Vol. 71, No. 157, pages 46894–46895, on August 15, 2006.

Bruce Borzino (C), Deputy Director, National Technical Information Service, Springfield, VA 22161. Appointment Expires: 12/31/2008. General.

Paul Doremus (C), Director of Strategic Planning, Program Planning and Integration, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910. Appointment Expires: 12/31/07. Limited.

Cita Furlani (C), Director, Information Technology Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/07. Limited.

Patrick Gallagher (C) (Alternate), Director, NIST Center for Neutron Research, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/07. Limited.

Howard Harary (C), Deputy Director, Manufacturing Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/07. Limited.

Patricia Sefcik (C), Senior Director to the Deputy Assistant Secretary for Manufacturing, Manufacturing and Services, International Trade Administration, Washington, DC 20230. Appointment Expires: 12/31/07. General.

James M. Turner (G), Deputy Director, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment Expires: 12/31/2009. General.

Dated: August 9, 2007.

William Jeffrey,

Director, National Institute of Standards and Technology, Department of Commerce.

[FR Doc. E7–18166 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC68

Endangered Species; File No. 1576

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

ACTION: Notice; receipt of application for modification.

SUMMARY: Notice is hereby given that NMFS, Northeast Fisheries Science Center (NEFSC), 166 Water Street, Woods Hole, MA 02543–1026, has requested a modification to scientific research Permit No. 1576.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 17, 2007.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1576.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1576, issued on November 8, 2006 (71 FR 65471) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1576 authorizes the permit holder to test modifications to scallop dredge gear that may reduce the probability of turtle injuries due to gear interactions. They may also opportunistically collect biological information from sea turtles captured in other projects or fisheries to improve NMFS's ability to assess stocks and the impact of anthropogenic activities. The permit holder requests authorization to capture, hold, transport, measure, weigh, flipper and passive integrated transponder tag, satellite tag, collect tissue biopsy, photograph, salvage and necropsy up to 50 loggerhead (Caretta caretta) and 50 Kemp's ridley (*Lepidochelys kempii*) sea turtles annually through October 31, 2011. Researchers request up to one accidental mortality of each species annually. Research would take place in the Atlantic Ocean off the coast of the eastern United States. The main purpose of the research is to use satellite-linked tags to obtain high-resolution information on the depth, temperature, and movement of these sea turtle species in areas coincident with Northeast fisheries.

Dated: September 12, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–18303 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA20

Notice of Availability of Proposed Low Effect Habitat Conservation Plan for Washington Department of Natural Resources' Commercial Geoduck Fishery

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

ACTION: Notice of availability; receipt of application.

SUMMARY: NMFS advises interested parties of Washington Department of Natural Resources' (WDNR) application for an incidental take permit (ITP), pursuant to section 10(a)(1)(B) of the

Endangered Species Act of 1973, as amended (ESA). The requested 50–year permit would authorize the incidental take of covered species associated with WDNR's management of the State's Commercial Geoduck Fishery in Puget Sound and the Strait of Juan de Fuca.

NMFS is requesting comments on the permit application and on whether the proposed Geoduck Fishery Habitat Conservation Plan (HCP) qualifies as a ''low-effect'' HCP. The HCP is available for public review.

DATES: Written comments should be received on or before October 17, 2007.

ADDRESSES: All comments concerning the preparation of the HCP should be addressed to: Laura Hamilton, National Marine Fisheries Service, Washington State Habitat Office, 510 Desmond Drive SE, Suite 103, Lacey WA 98503, fscimile number 360–753–9517. Comments may be submitted by e-mail to the following address: *geoduckHCP.nwt@noaa.gov*. In the subject line of the e-mail, include the document indentifier: Geoduck HCP.

FOR FURTHER INFORMATION CONTACT: Laura Hamilton, NMFS (360)753–5820.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application or proposed HCP should contact NMFS by telephone (see **FOR FURTHER INFORMATION CONTACT**) or by letter (see **ADDRESSES**). Copies of the subject documents also are available for public inspection during regular business hours at NMFS' Washington State Habitat Office (see **ADDRESSES**) and are available at the following website: *www.nwr.noaa.gov/Salmon-Habitat/Habitat-Conservation-Plans/Index.cfm*.

Statutory Authority

Section 9 of the Endangered Species Act (ESA) (16 U.S.C. 1538) and implementing regulations prohibit the taking of animal species listed as endangered or threatened. The term ''take'' is defined under the ESA (16 U.S.C. 1532(19)) as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS' definition of ''harm'' includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

Section 10 of the ESA and implementing regulations specify requirements for the issuance of incidental take permits (ITPs) to non-Federal entities for the take of endangered and threatened species. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22. Any proposed take must be incidental to otherwise lawful activities, not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and minimize and mitigate the impacts of such take to the maximum extent practicable. In addition, the applicant must prepare a habitat conservation plan (HCP) describing the impact that will likely result from such taking, the strategy for minimizing and mitigating the take, the funding available to implement such steps, alternatives to such taking, and the reason such alternatives are not being implemented.

Background

WDNR is seeking an ITP from NMFS for the incidental take of species that are listed as either threatened or endangered under the ESA, and certain species should they become listed during the 50–year term of the permit. The species under consideration for NMFS coverage include Chinook salmon (*Oncorhynchus tshawytscha*), Chum salmon (*O. keta*), coho salmon (*O. kisutch*), pink salmon (*O. gorbuscha*), Pacific herring (*Clupea harengus pallasi*), steelhead (*O. mykiss*), southern resident orca (*Orcinus orca*), pinto abalone (*Haliotis kamtschatkana*), and Olympia oyster (*Ostrea conchaphila*). The ITP would provide ESA regulatory certainty for Washington State's commercial geoduck fishery. Proposed covered activities under the HCP include the sub-tidal harvest of wild stock geoduck clams on state-owned aquatic lands for commercial, research and health sampling purposes.

The majority of subtidal land in the state, and the resources embedded in them, are owned by Washington State and managed by the WDNR. The geoduck clam is among the most commercially valuable of these resources.

The wild geoduck fishery in the state is jointly managed by WDNR, Washington Department of Fish and Wildlife (WDFW), and the Puget Sound Treaty Indian Tribes (Tribes). The state and the Tribes each have a right to 50 percent of the allowable geoduck catch. The state and the Tribes are jointly responsible for estimating geoduck population size, determining sustainable yield, and protecting the health of the geoduck stock and the habitat they depend upon. WDNR offers the state's half of the geoduck harvest at auctions for the right of private companies and individuals to harvest specific quantities of geoducks in specific areas. As the state's co-managers of the geoduck resource, WDNR and WDFW enforce civil and criminal Washington State laws, regulations and contract conditions that apply to the state's fishery.

Washington's commercial geoduck fishery is divided into six geoduck management regions. Commercial harvest occurs within one management region at a time, and usually on one tract at a time. There are currently 192 commercial geoduck tracts comprising approximately 29,908 acres of subtidal bedlands. Ten to fourteen harvest quotas are offered at each WDNR geoduck harvest auction, resulting in 30 to 40 individual harvest agreements annually. Typically, one or two tracts are open for harvest at any given time. The tract boundaries are defined by a water depth of -18 feet (5.49 meters) mean lower low water (MLLW) to the outer edge of the harvest area depth of -70 feet (21.37 meters) MLLW. Most of the subtidal tracts range in size from 18 acres to 459 acres. A small number of tracts are larger. Harvest limits are based on the annual harvest level Total Allowable Catch (TAC). The TAC for a management region is the total weight of geoduck that may be harvested during the year in each management region. The number is calculated annually and is the product of the regional commercial biomass estimate multiplied by the equilibrium harvest rate.

Harvesting is done by divers in shallow waters relatively close to shore. A water-jet is used which consists of a nozzle about 18 inches (0.6 meters) long with a 5/8 inch diameter (0.02 meters) tip at the digging end. The harvester simultaneously inserts the nozzle next to a geoduck siphon and grasps the siphon. A short burst of ambient water drawn from the surface at between 77–89 gallons per minute with a pressure of about 80 pounds per square inch, liquefies the sediment allowing for removal of the geoduck. The divers operate from medium sized 25 to 60 feet (7.62 to 18.29 meters) anchored boats, equipped with pumps and compressors to provide the divers with air through hoses, as well as to pressurize the water for the jets. In addition to one to two divers, each boat has a tender onboard to monitor the pumps and compressors and to haul harvested geoduck aboard. The tender and divers are in constant contact via telemetry (communications) through the diver's umbilical.

The proposed minimization and mitigation measures include, but are not limited to: limiting the number of acres open to harvest in each management

region per year; permitting harvest only from tracts designated through contract by WDNR; clearly marking tracts with easily identifiable stakes and/or buoys, and recording latitude and longitude positions on all markers; limiting surface noise levels; applying harvest boundaries and buffers to protect eelgrass beds, forage fish spawning areas and other sensitive nearshore habitats and providing direct oversight of the fishery by maintaining compliance staff aboard vessels on harvest tracts each day that commercial geoduck harvest occurs.

Approval of the HCP may qualify as a ''low-effect'' plan as defined by the Habitat Conservation Planning Handbook (NMFS and USFWS, November, 1996). Determination of low effect HCPs is based upon the plan having: minor or negligible effects on federally-listed, proposed, or candidate species and their habitats; minor or negligible effects on other environmental values or resources; and, impacts that considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to the environmental values or resources which would be considered significant. If the plan is found to qualify as a low-effect HCP, further NEPA documentation beyond a categorical exclusion review would not be required by NMFS.

Request for Comments

If you wish to comment on the permit application or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. NMFS requests that comments be specific. In particular, we request information regarding: direct, indirect, and cumulative impacts that implementation of the proposed HCP or other alternatives could have on endangered and threatened and other covered species, and their communities and habitats; potential adaptive management and/or monitoring provisions; funding issues; existing environmental conditions in the plan area; other plans or projects that might be relevant to this proposed project; permit duration; maximum acreage that should be covered; specific species that should or should not be covered; and minimization and mitigation efforts. We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the ESA and NEPA regulations.

Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

If we determine that the requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the ESA to the Applicant for take of the proposed covered species, incidental to otherwise lawful activities in accordance with the terms of the permit. We will not make our final decision until after the end of the 30–day comment period and will fully consider all comments received during the comment period.

NMFS provides this notice pursuant to section 10(c) of the ESA and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: September 11, 2007.

Angela Somma,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. E7–18305 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC58

Marine Mammals; File No. 1039–1916

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Ann Zoidis, Cetos Research Organization, 11 Des Isle Avenue, Bar Harbor, Maine, has applied in due form for a permit to conduct research on marine mammals in Hawaii and the Gulf of Maine.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 17, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1039–1916.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant is requesting to study 17 species of cetaceans in Hawaii and 10 species in the Gulf of Maine. The purpose of the research is to expand ESA and non-ESA listed species abundance, distribution, and acoustic data. More specifically, this research would provide information on diving and foraging behavior of cetaceans while acoustic studies would contribute to data investigating the relationship between repertoire, pod composition, and behavior. Research activities would include vessel surveys, photo-ID, passive acoustic recording, and

behavioral observations for all species. Furthermore, suction-cup tagging of humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), minke (*Balaenoptera acutorostrata*), sei (*Balaenoptera borealis*), and sperm (*Physeter macrocephalus*) whales would also occur. Tagging of sei, minke, and sperm whales would be limited to adults and subadults while all age classes, except neonates, of humpback and fin whales would be tagged. Underwater videography of humpback whales in Hawaii is also requested. No mortality is anticipated. The permit would be valid for 5 years from date of issuance.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 11, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–18295 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC64

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panels and its Scallop Committee, in October, 2007, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: These meetings will be held on Wednesday, October 10, 2007, at 9 a.m. and Thursday, October 11, 2007, at 9 a.m.

ADDRESSES: These meetings will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600; fax: (978) 535–8238.

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:

Wednesday, October 10, 2007; Scallop General Category and Advisory Panels Meeting.

The Scallop Advisory Panels will review and recommend preferred alternatives for Framework 19 to the Scallop Fishery Management Plan. Framework 19 is a biennial action that will set management measures for fishing years 2008 and 2009.

Thursday, October 11, 2007; Scallop Committee Meeting.

The Committee will review and recommend preferred alternatives for Framework 19 to the Scallop Fishery Management Plan. The Committee will also review and approve research priorities for the 2008–2009 Scallop Research Set-Aside Program. The Committee may consider other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 12, 2007.

Emily Menashes,

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

[FR Doc. E7–18225 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC62

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 (Council) is scheduling a public meeting of its Monkfish Oversight Committee, in October, 2007, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, October 3, 2007, at 9:30 a.m.

ADDRESSES: This meeting will be held at the Hilton Garden Inn, One Thuber Street, Warwick, RI 02886; telephone: (401) 734–9600; fax: (401) 734–9700.

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: The Committee will identify alternatives to be developed for consideration in Framework Adjustment 5 possibly including, but not limited to, changes to the biological reference points (as recommended by the recent stock assessment workshop), days-at-sea (DAS) carryover limits, minimum mesh requirements for vessels fishing on a monkfish/multispecies DAS, monkfish landings under the 3-hour gillnet rule, frontloading of monkfish DAS, Mid-Atlantic area large mesh monkfish incidental catch limits, monkfish gillnet rules for vessels fishing as a multispecies trip gillnet vessel and the requirement to obtain a monkfish Letter of Authorization to fish in the northern management area. The final list of issues to be addressed depends on the decisions of the New England Fishery Management Council at its September meeting.

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 listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens 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, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 12, 2007.

Emily Menashes,

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

[FR Doc. E7–18227 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC60

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, in Anchorage AK.

DATES: The meetings will be held on October 1, 2007 through October 9, 2007. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. on Wednesday, October 3 continuing through Tuesday October 9, 2007. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, October 1 and continue through Saturday October 6. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, October 1 and continue through Wednesday October 3, 2007. The Enforcement Committee will meet Tuesday, October 2, from 1 p.m. to 4 p.m. in the Iliamna Room. The Crab Advisory Committee will meet 6 p.m. to 8 p.m. in the King Salmon Room. All meetings are open to the public, except executive sessions.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports

Executive Director's Report (including Magnuson-Stevens Fishery Management Act)

NMFS Management Report

U.S. Coast Guard Report

Alaska Department of Fish & Game Report

U.S. Fish & Wildlife Service Report

Protected Species Report (Steller Sea Lion (SSL) Measures Environmental Impact Statement (EIS): Notice of Intent, Draft Marine Mammal Protection Act (MMPA) List of Fisheries for 2008, SSL Recovery Plan and Biological Opinion Update, act as necessary)

2. Charter Halibut Management: Initial review of Charter Halibut 3A Guideline Harvest Levels (GHL) measures; Preliminary review of Charter Halibut Allocation/Compensation; SSC review of charter halibut discard mortality information (T)(SSC only); SSC review of estimation procedures for charter halibut, Dusky Shelf rockfish, and shark catch (SSC only).

3. Halibut Subsistence: Discuss Alternatives for Halibut Subsistence Rural definition.

4. Bering Sea Aleutian Island (BSAI) Crab Fishery Management: Report on Crab data collection quality and confidentiality; Committee report-discussion paper on BSAI Crab 'B' Shares; Initial review BSAI Crab 'C' share 90/10 exemption; Initial review BSAI Crab custom processing (T); Initial review BSAI Crab post-delivery transfers (T).

5. Gulf of Alaska (GOA) Groundfish Issues: Preliminary review GOA Pacific cod sector split; Discussion paper on GOA fixed gear License Limitation Program (LLP) recency; action as necessary; Discussion paper on GOA sideboards; action as necessary; Initial review Central GOA rockfish post-delivery transfers (T).

6. LLP Trawl Recency: Initial review of analysis.

7. Amendment 80: Review discussion paper on Amendment 80 post-delivery transfers (T).

8. Socioeconomic Data Collection: Report on Comprehensive socioeconomic data collection.

9. Groundfish Management; Final action on GOA arrowtooth Maximum Retainable Amount (MRA), Regulatory Amendment; Initial review Western GOA pollock trip limit, Plan Amendment; Report on specifications per Amendment 80 and 85; action as necessary; Review new stock assessment information (SSC only); Initial action on Groundfish specification; Discussion paper on seabird avoidance measures for Area 4E; action as necessary; Review tasking plans for managing Other Species complex and discussion paper on analytical approach.

10. Salmon Management: Salmon Bycatch Workgroup report; Refine alternatives; Report on Salmon excluder Experimental Fishery Permit.

11. Crab Management: Crab Plan Team Report; Approve BSAI crab Stock Assessment Fishery Evaluation Report; Initial review BSI crab overfishing definition.

12. Arctic Fishery Management: Ecosystem Committee report and action as necessary; Review and approve outreach plan.

13. Staff Tasking: Review Committees and tasking, and take action as necessary; Review broader (Programmatic Supplemental Environmental Impact Statement) community outreach plan (T).

14. Other Business.

The SSC agenda will include the following issues:

1. Halibut Charter
2. BSAI Crab Management
3. GOA Groundfish
4. Socioeconomic data
5. LLP Trawl Recency
6. Groundfish Management
7. Salmon Bycatch
8. Crab Overfishing

The Advisory Panel will address the same agenda issues as the Council, except for reports. The Agenda is subject to change, and the latest version will be posted at *http://www.fakr.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 12, 2007.

Emily Menashes,

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

[FR Doc. E7–18229 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC65

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Trawl Individual Quota Committee (TIQC) will hold a working meeting, which is open to the public.

DATES: The TIQC meeting will be held Thursday, October 11, 2007, from 8 a.m. until business for the day is completed. The TIQC meeting will reconvene Friday, October 12, 2007, at 8 a.m. and adjourn by 3 p.m.

ADDRESSES: The TIQC meeting will be held at the Hotel Deca Seattle, Chancellor Room, 4507 Brooklyn Avenue NE, Seattle, WA 98105; telephone: (206) 634–2000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The Council is considering an individual quota program to cover limited entry trawl landings in the West Coast groundfish fishery. Vessel co-op alternatives are also being considered. The purpose of the TIQC working meeting is to review and further develop alternatives under analysis.

Although non-emergency issues not contained in the meeting agenda may come before the TIQC for discussion, those issues may not be the subject of formal TIQC action during this meeting. TIQC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the TIQC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 12, 2007.

Emily Menashes,

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

[FR Doc. E7–18224 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC63

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Tuesday, October 9, 2007, from 1 p.m. until business for the day is completed. The GMT meeting will reconvene Wednesday, October 10 through Friday, October 12, from 8:30 a.m. until business for the day is completed.

ADDRESSES: The GMT meeting will be held at the Hotel Deca Seattle, President Room, 4507 Brooklyn Avenue NE, Seattle, WA 98105; telephone: (206) 634–2000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT working meeting is to develop a range of 2009–10 optimum yields for groundfish species from new stock assessments and rebuilding analyses, consider recommendations for 2009–10 management measures, consider recommendations for inseason adjustments to 2007 and 2008 groundfish fisheries, consider recommendations for 2008 exempted fishing permits, consider recommendations and implications for implementing mandates in the re-authorized Magnuson-Stevens Fishery Conservation and Management Act, consider recommendations for intersector allocations of groundfish species, and consider recommendations for developing a trawl rationalization program. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's role will be development of recommendations for consideration by the Council at its November meeting in San Diego, CA.

Although non-emergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 12, 2007.

Emily Menashes,

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

[FR Doc. E7–18226 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC61

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Model Evaluation Workgroup (MEW) will hold a work session by telephone conference, which is open to the public, to finalize products for the October 24–25, 2007, Salmon Methodology Review meeting.

DATES: The telephone conference will be held Tuesday, October 2, 2007, from 1 p.m. to 4 p.m.

ADDRESSES: A listening station will be available at the Pacific Fishery Management Council, Small Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council: telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to achieve consensus on products developed by MEW members for the Council's salmon methodology review, which involves a meeting of the Council's Scientific and Statistical Committee Salmon Subcommittee, Salmon Technical Team, and MEW on October 24–25, 2007.

Although non-emergency issues not contained in the meeting agenda may come before the MEW for discussion, those issues may not be the subject of formal MEW action during this meeting. MEW action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MEW's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 12, 2007.

Emily Menashes,

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

[FR Doc. E7–18228 Filed 9–14–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignment

AGENCY: Office of Economic Adjustment, Department of Defense.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of a successor Local Redevelopment Authority (LRA) for Fort Monroe, Virginia recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the point of contact, address, and telephone number for the successor LRA for this installation. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of the installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of the installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

EFFECTIVE DATE: September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

Virginia

Installation Name: Fort Monroe.

LRA Name: Fort Monroe Federal Area Development Authority, successor to Federal Area Development Authority.

Point of Contact: Nicole M. Rovner, Deputy Secretary of Natural Resources, Department of Natural Resources, Commonwealth of Virginia.

Address: P.O. Box 1475, Richmond, VA 23218.

Phone: (804) 786–0044.

Dated: September 10, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4591 Filed 9–14–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance bonuses and basic pay increases. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

ADAMS, P. C. MS.
ARCHITZEL, D. RADM
ARNY, L. W. MR.
BALDERSON, D. MS.
BALDERSON, W. M. MR.
BARBER, A. H. MR.
BARNUM, H. C. MR.
BAUMAN, D. M. MR.
BELAND, R. W. DR.
BETRO, T. A. MR.
BLAIR, A. K. MS.
BLINCOE, R. J. MR.
BOURBEAU, S. J. MS.
BRANCH, E. B. MR.
BRAY, W. P. MR.
BRENNAN, A. M. MS.
BROTHERTON, A. E. MS.
BROWN, M. RDML
CALI, R. T. MR.
CAREY, R. J. MR.
CARLIN, R. T. DR.
CARR, N. RDML
CASTELLAW, J. LTGEN
COHN, H. A. MR.
COLEMAN, R. LTGEN
COOK, C. E. MR.
COOLEY, K. MR.
COX, A. D. MR.
CREEDON, C. MR.
CWALINA, B. B. MR.
DAVENPORT, D. RADM
DAVIS, A. R. MS.

DAVIS, L. C. DR.
DECKER, J. MS.
DECKER, M. H. MR.
DEITCHMAN, M. MR.
DELIGNE, W. J. MR.
DEUTSCH, K. RADM
DILLON, B. MR.
DUNN, S. C. MR.
EASTBURG, S. RDML
ECCLES, T. RDML
EHRLER, S. M. MR.
ELLIS, W. G. MR.
ENEWOLD, G. RADM
ETTER, D. M., THE HONORABLE
EVANS, G. L. MS.
EVANS, I. E. MS.
EVANS, J. J. MR.
EXLEY, R. L. MR.
FERGUSON, J.F. MR.
FERKO, J. G. MR.
FLYNN, T. V. RDML
FISCHER, J. W. DR.
FITZGERALD, M. VADM
FRANKFURT, T. MR.
FRANTZ, G. T. MR.
FRICK, M. S. RDML
GAHAGAN, D. CAPT.
GALGANO, M. MR.
GALLOWAY, J. MR.
GAVIN, V. S. MR.
GLAS, R. MR.
GODDARD, C. H. RDML
GONZALEZ, A. H. MR.
GOODHART, J. C. MR.
GORDON, F. E. DR.
GRIFFES, M. D. MR.
GRIFFIN, R. MR.
GUARD, H. MR.
HAMILTON, C. RADM
HANNAH, B. W. DR.
HARNED, N. MS.
HARVEY, J. C. VADM
HAYNES, R. S. MR.
HEELY, T. RADM
HERR, R. DR.
HILARIDES, W. H. RDML
HOGUE, R. D. MR.
HONECKER, M. W. MR.
HOWARD, J. S. MR.
ISELIN, S. MR.
JAGGARD, M. F. MR.
JAMES, J. H. MR.
JIMENEZ, F., THE HONORABLE
JOHNSON, J. L. MR.
JOHNSON, S. RADM
JUNKER, B. R. DR.
KARLE, I. DR.
KRAMLICH, R. S. LTGEN
KASKIN, J. D. MR.
KEEN, S. L. MS.
KLEINTOP, M. U. MS.
KRASIK, S. A. MS.
KRUM, R. A. MR.
KUNESH, N. J. MR.
LAKE, R. BGEN
LANDAU, S. P. MR.
LAUX, T. E. MR.
LAWRENCE, J.P. DR.
LEACH, R. A. MR.
LEDVINA, T. N. MR.
LEGGIERI, S. R. MS.
LEIKACH, K. MR.
LOFTUS, J. V. MS.
LONG, L. MS.
LUCCHINO, C. MS.
LUNDBERG, D. A. MR.
LUNNEY, J. E. MR.
LUTTERLOH, S. MR.
MAGLICH, M. F. MR.
MAGNUS, R. LTGEN
MAGUIRE, M. M. MS.
MARSHALL, J. B. MR.
MASCIARELLI, J. R. MR.
MCCARTHY, J. MR.
MCCORMACK, JR., D. F. MR.
MCCOY, K. M. RDML
MCCURDY, J. MR.
MCGRATH, M. F. MR.
MCLAUGHLIN, P. M. MR.
MCNAIR, J. W. MR.
MEADOWS, L. J. MS.
MEEKS JR.
A. W. DR.
MENG, J. C. DR.
MILLER, C. A. MR.
MITCHELL, S. MR.
MOLZAHN, W. R. MR.
MONTGOMERY, J. A. DR.
MURRAY, S. MS.
MUTH, C. C. MS.
NAVAS JR., W. A., THE HONORABLE
NYALKO, L. J. MS.
O'NEIL, S. M. MR.
PAOLETTI, C. MR.
PENN, B. J., THE HONORABLE
PERSONS, B. J. MR.
PIC, J. E. MR.
PIVIROTTO, R. R. MR.
PLUNKETT, B. J. MR.
RAPS, S. P. MS.
REEVES, C. R. MR.
ROBERTS, T. MS.
RODRIGUEZ, RDML
ROLLOW, T. A. MR.
ROSENTHAL, R. J. MR.
RYZEWIC, W. H. MR.
SANDERS, D. K. MR.
SANDEL, E. A. MS.
SCHAEFER, J. C. MR.
SCHREGARDUS, D. R. MR.
SEE, V. RDML
SHANNON, W. RDML
SHARP, B. A. MR.
SHEPHARD, M. R. MS.
SIEL JR., C. R. MR.
SKINNER, W. RDML
SMERCHANSKY, J. H. MR.
SMITH, R. F. MR.
SMITH, R. M. MR.
SOLHAN, G. W. MR.
SOMOROFF, A. R. DR.
SORENSON, D. CAPT
SPANN, L. H. MR.
STEFFEE, D. P. MR.
STILLER, A. F. MS.
SUMMERALL, W. MR.
TAMBURRINO, P. M. MR.
TESCH, T. G. MR.
THACKRAH, J. MR.
THOMSEN, J. E.
TIMME, W. G. RDML
TOWNSEND, D. K. MS.
WALLS, V. J. MR.
WARD, J. D. MR.
WEDDEL, D. W. MR.
WEYMAN, A. S. MR.
WHITTEMORE, A. MS.
WHITTMANN, J. MR.
WOOD, B. H. MR.
and WIERINGA, J. A. RDML

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Palmer, Office of Civilian Human Resources, telephone: 202–685–6665.

Dated: September 10, 2007.

T.M. Cruz,

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

[FR Doc. E7–18232 Filed 9–14–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Biological and Environmental Research (BER); Federal Interagency Steering Committee on Multimedia Environmental Modeling

AGENCY: Office of Science; Biological and Environmental Research (BER), Department of Energy, (DOE).

ACTION: Notice of open meeting.

SUMMARY: The annual public meeting of the Federal Interagency Steering Committee on Multimedia Environmental Modeling (ISCMEM) will convene to discuss new operational initiatives for FY 2008 among the participating agencies.

DATES: September 25, 2007. Time: 9 a.m. to 5 p.m.

ADDRESSES: The Washington Hilton Hotel, 1919 Connecticut Avenue NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be faxed or e-mailed to: Dr. Robert T. Anderson, ISCMEM Chair, Office of Biological and Environmental Research, SC–23.4/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, Tel 301–903–5549, Fax 301–903–4154, *Todd.Anderson@science.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background: Eight Federal agencies have been cooperating under a new Memorandum of Understanding (MOU) on the research and development of multimedia environmental models for the past year. The new MOU continues a previous 5 year effort that began in 2001 and establishes a framework for

facilitating cooperation and coordination among the following agencies (the specific research organization within the agency is in parenthesis): U.S. Army Corps of Engineers (Engineer Research and Development Center); U.S. Department of Agriculture (Natural Resources Conservation Service); U.S. Department of Energy (Office of Biological and Environmental Research); U.S. Environmental Protection Agency; U.S. Geological Survey; U.S. National Oceanographic and Atmosphere Administration; and U.S. Nuclear Regulatory Commission (Office of Nuclear Regulatory Research); U.S. Bureau of Reclamation. These agencies are cooperating and coordinating in the research and development (R&D) of multimedia environmental models, software and related databases, including development, enhancements, applications and assessments of site specific, generic, and process-oriented multimedia environmental models as they pertain to human and environmental health risk assessment. Multimedia model development and simulation supports interagency interests in risk assessment, uncertainty analyses, water supply issues and contaminant transport.

Purpose of the Public Meeting: The annual public meeting provides an opportunity for the scientific community, other Federal and State agencies, and the public to be briefed on ISCMEM activities and their initiatives for the upcoming year, and to discuss technological advancements in multimedia environmental modeling.

Proposed Agenda: The ISCMEM Chair will open the meeting with a brief overview of the goals of the MOU and an update on current activities of ISCMEM. This introduction will be followed by series of invited presentations throughout the morning session focusing on topics of mutual interest to ISCMEM participants. The afternoon session will be largely devoted to discussing future goals and projects that will set the stage for collaborative interactions among ISCMEM participating agencies for coming year. A detailed agenda with presentation titles and speakers will be posted on the MOU public Web site: *http://www.ISCMEM.Org*.

Meeting Access: The Washington Hilton Hotel is located at 1919 Connecticut Avenue, NW., Washington, DC 20009. The most convenient transportation to the meeting venue is via Metro. Please take Metro to the Dupont Circle Metro stop on the Red Line. Upon exiting the Metro station proceed Northwest on Connecticut Avenue, NW., for about 4 blocks. The Washington Hilton is on the right. Please check with the hotel staff or look for signs for the ISCMEM public meeting room as you enter the building.

Robert T. Anderson,

Chair, Federal Interagency Steering Committee on Multimedia Environmental Modeling.

[FR Doc. E7–18254 Filed 9–14–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1062–000, ER07–1062–001, ER07–1063–000, and ER07–1063–001]

AB Energy NY, Pty. Ltd.; AB Energy NE, Pty. Ltd.; Notice of Issuance of Order

September 11, 2007.

AB Energy NY, Pty. Ltd (AB Energy NY) and AB Energy NE, Pty. (AB Energy NE) filed applications for market-based rate authority, with accompanying rate schedules. The proposed market-based rate schedules provide for the sale of energy, capacity and ancillary services at market-based rates. AB Energy NY and AB Energy NE also requested waivers of various Commission regulations. In particular, AB Energy NY and AB Energy NE requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by AB Energy NY and AB Energy NE.

On September 10, 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 AB Energy NY and AB Energy NE, 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 10, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, AB Energy NY and AB Energy NE are 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 AB Energy NY and AB Energy NE, 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 AB Energy NY's and AB Energy NE'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. E7–18251 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1199–000]

Airtricity Munnsville Wind Farm, LLC; Notice of Issuance of Order

September 11, 2007.

Airtricity Munnsville Wind Farm, LLC (Munnsville) 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. Munnsville also requested waivers of various Commission regulations. In particular, Munnsville requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Munnsville.

On September 10, 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 Munnsville, 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 10, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Munnsville 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 Munnsville, 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 Munnsville'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. E7–18250 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–615–012; ER07–1257–000]

California Independent System Operator Corp.; Notice of Technical Conference

September 11, 2007.

Take notice that Commission staff will convene a technical conference in the above-referenced proceedings on Wednesday, September 26, 2007, at 10 a.m. (EST), in Hearing Room 1 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. If necessary, the technical conference will continue until 1 p.m. on Thursday, September 27, 2007 in the same location.

The Commission's September 21, 2006 order in this proceeding directed staff to hold a technical conference to help determine which practices or details remaining in the Business Practice Manuals (BPM) might appropriately belong in the MRTU Tariff.[1]

Parties that plan to participate at this technical conference should submit a list of BPM provisions they wish to discuss by the close of business on Tuesday, September 18, 2007. This information should be filed in Docket No. ER06–615–012. All technical conference participants should be prepared to discuss specific BPM provisions as they relate to the proposed MRTU Tariff.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact Katherine Gensler at 916–294–0275 or *katherine.gensler@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–18252 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

[1] *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 1370 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–5–006]

Empire State Pipeline, Empire Pipeline, Inc.; Notice of Compliance Filing

September 11, 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 section 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. E7–18255 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–591–000; ER07–591–001; ER07–591–002]

Exel Power Sources, LLC; Notice of Issuance of Order

September 10, 2007.

Exel Power Sources, LLC (Exel Power) 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. Exel Power also requested waivers of various Commission regulations. In particular, Exel Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Exel Power.

On September 7, 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 Exel Power, 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 9, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Exel Power 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 Exel Power, 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 Exel Power'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. E7–18209 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1138–000]

Jeffers Wind 20, LLC; Notice of Issuance of Order

September 10, 2007.

Jeffers Wind 20, LLC (Jeffers Wind) 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. Jeffers Wind also requested waivers of various Commission regulations. In particular, Jeffers Wind requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Jeffers Wind.

On September 7, 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 Jeffers Wind, 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 9, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Jeffers Wind 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 Jeffers Wind, 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 Jeffers Wind'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. E7–18211 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC07–3–000]

Lee County, FL; Notice of Filing

September 11, 2007.

Take notice that on September 7, 2007, Lee County, Florida (Lee County) filed an appeal from the August 21, 2007 decision of the North American Electric Reliability Corporation (NERC) to include Lee County's municipal solid waste resource recovery generating facility on the NERC compliance registry within the Florida Reliability Coordinating Council for the function of generator owner. Lee County states that it owns or operates a waste-to-steam facility which generates electric through recovery of steam produced as a byproduct from the combustion of municipal solid waste, which is a qualifying facility (QF). Lee County asks the Commission to reverse the NERC's inclusion of its QFs on the compliance registry and to stay the effectiveness of the NERC decision pending resolution of the appeal by the Commission.

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 October 9, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–18249 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1139–000]

York Haven Power Company; Notice of Issuance of Order

September 10, 2007.

York Haven Holdings, Inc. filed on behalf of York Haven Power Company (York Haven) 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. York Haven also requested waivers of various Commission regulations. In particular, York Haven requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by York Haven.

On September 7, 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 York Haven, 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 9, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, York Haven 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 York Haven, 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 York Haven'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. E7–18210 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–95–000]

Black Oak Energy, LLC, Complainant v. New York Independent System Operator, Inc., Respondent; Notice of Complaint

September 10, 2007.

Take notice that on September 7, 2007, Black Oak Energy, LLC (Black Oak), filed a formal complaint against New York Independent System Operator, Inc. (NYISO) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2000), and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2007), alleging that the NYISO failed to properly administer its energy markets on at least three occasions in 2005, which resulted in substantial financial losses to Black Oak.

Black Oak certifies that copies of the complainant were served on the contacts for NYISO as listed on the Commission's list of Corporate Officials.

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 September 27, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–18213 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 10, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–312–167.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits Early Termination Agreement with Caledonia Power I, LLC to terminate a transportation service agreement pursuant to its Rate Schedule FT–A .

Filed Date: 09/07/2007.

Accession Number: 20070910–0132.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 19, 2007.

Docket Numbers: RP06–595–008.

Applicants: Discovery Gas Transmission LLC.

Description: Discovery Gas Transmission LLC submits Eighth Revised Sheet 22 et al to FERC Gas Tariff, Original Volume 1, to become effective 9/5/07.

Filed Date: 09/05/2007.

Accession Number: 20070906–0039.

Comment Date: 5 p.m. Eastern Time on Monday, September 17, 2007.

Docket Numbers: RP07–555–001.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits Substitute Second Revised Sheet 326 to FERC Gas Tariff, Third Revised Volume 1, effective 9/1/07.

Filed Date: 09/07/2007.

Accession Number: 20070910–0131.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 19, 2007.

Docket Numbers: RP07–658–001.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Company submits a correction to its 8/31/07 filing of revised tariff sheets.

Filed Date: 09/06/2007.

Accession Number: 20070906–0153.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 18, 2007.

Docket Numbers: RP07–659–001.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Company submits correction to its 8/31/07 filing of revised tariff sheets.

Filed Date: 09/06/2007.

Accession Number: 20070906–0154.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 18, 2007.

Docket Numbers: RP07–686–000.

Applicants: Northwest Pipeline Corporation.

Description: Northwest Pipeline Corp submits Thirty-First Revised Sheet 14 to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 09/04/2007.

Accession Number: 20070905–0120.

Comment Date: 5 p.m. Eastern Time on Monday, September 17, 2007.

Docket Numbers: RP07–687–000.

Applicants: Transcontinental Gas Pipe Line Corp.

Description: Transcontinental Gas Pipe Line Corp submits Third Revised Sheet 33A et al to FERC Gas Tariff, Third Revised Volume 1, effective 10/8/07.

Filed Date: 09/07/2007.

Accession Number: 20070910–0130.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 19, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–18202 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 7, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–129–000.
Applicants: Santa Rosa Energy Center, LLC.
Description: Santa Rosa Energy Center LLC submits an application for approval under section 203 of the Federal Power Act.
Filed Date: 08/31/2007.
Accession Number: 20070906–0129.
Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Docket Numbers: EC07–130–000.
Applicants: Ford Motor Company, Twin Cities Hydro LLC.
Description: Ford Motor Co and Twin Cities Hydro LLC submit a joint application for authorization re a proposed transaction by which Twin Cities would acquire Ford Project 362.
Filed Date: 08/31/2007.
Accession Number: 20070906–0143.
Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–780–018; ER01–1633–006; ER03–1383–009; ER00–3240–009.
Applicants: Southern Company Services, Inc.
Description: Notice of Non-Material Change in Status of Southern Company Services, Inc.
Filed Date: 08/31/2007.
Accession Number: 20070831–5040.
Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Docket Numbers: ER01–542–003; ER06–703–001; Er05–1218–002; Er05–1219–002; ER00–2887–005.
Applicants: STI Capital Company; Pedricktown Cogeneration Company, LP; Bayonne Plant Holding, L.L.C.; Camden Plant Holding, L.L.C.; Newark Bay Cogeneration Partnership, L.P.
Description: STI Capital Company *et al.* submit an amendment to the 7/16/07 notice of non-material change in status to reflect the foregoing name and corporate changes of STI etc.
Filed Date: 09/04/2007.
Accession Number: 20070906–0132.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER04–839–002.
Applicants: MAG Energy Solutions, Inc.
Description: MAG Energy Solutions, Inc. submits their Revised Based Rate Schedule to replace the Based Rate Schedule submitted on 8/3/04 etc. under ER04–839.
Filed Date: 09/04/2007.
Accession Number: 20070906–0027.
Comment Date: 5 p.m. Eastern Time on Monday, September 17, 2007.

Docket Numbers: ER07–546–003.
Applicants: ISO New England Inc.
Description: ISO New England Inc. et al. submits various Tariff and Market Rule 1 changes to comply with FERC's 4/16/07 Order.
Filed Date: 08/31/2007.
Accession Number: 20070906–0131.
Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Docket Numbers: ER07–596–002.
Applicants: E.ON U.S., LLC.
Description: E.ON U.S. LLC on behalf of Louisville Gas and Electric Co and Kentucky Utilities Co submit a compliance filing incorporating the changes required in the 8/3/07 Order.
Filed Date: 09/04/2007.
Accession Number: 20070906–0042.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07–1019–001; ER07–1020–001; ER07–1021–001.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corporation's response to FERC's 7/31/07 letter.
Filed Date: 08/31/2007.
Accession Number: 20070907–0182.
Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Docket Numbers: ER07–1237–001.
Applicants: UP Power Marketing, LLC.
Description: UP Power Marketing LLC submits FERC Electric Tariff, Original Volume No.1 revised to reflect the requirements of Order 697.
Filed Date: 09/04/2007.
Accession Number: 20070906–0043.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07–1251–001.
Applicants: Northern Maine Independent System Administrator, Inc.
Description: Northern Maine Independent System Administrator Inc. submits amendments to certain of the Northern Maine Market Rules filed by the NMISA as Second Rate Schedule 2 on 8/3/07.
Filed Date: 08/31/2007.
Accession Number: 20070906–0130.
Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Docket Numbers: ER07–1339–000; ER07–1340–000.
Applicants: Split Rock Energy LLC; Minnesota Power and Split Rock Energy LLC.
Description: Split Rock Energy LLC on behalf of Minnesota Power submits notices of cancellation for FERC Electric Tariff, First Revised Volume 1 *et al.* Filed Date: 09/04/2007.
Accession Number: 20070906–0052.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07–1341–000.
Applicants: York Generation Company LLC.
Description: York Generation Co LLC submits a notice of succession reflecting the adoption of the FERC Electric Tariff, Original Volume No. 1 of STI Capital Co.
Filed Date: 09/04/2007.
Accession Number: 20070906–0051.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07–1342–000.
Applicants: Central Vermont Public Service Corporation.
Description: Central Vermont Public Service Corp. submits a notice of termination of the Woodsville Power Sales Agreement.
Filed Date: 09/04/2007.
Accession Number: 20070906–0050.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07–1343–000.
Applicants: State Line Energy, L.L.C.
Description: State Line Energy, LLC submits a notice of cancellation of the Power Sales Agreement with Exelon Generation Service.
Filed Date: 09/05/2007.
Accession Number: 20070906–0049.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 26, 2007.

Docket Numbers: ER07–1344–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy Inc. submits its Cost-Based Formula Rate Agreement for Full Requirements Electric Service.
Filed Date: 08/31/2007.
Accession Number: 20070906–0048.
Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Docket Numbers: ER07–1345–000; ER07–1346–000; ER07–1347–000.
Applicants: American Electric Power Service Corp.
Description: American Electric Power Service Corp. *et al.* submit a notice of cancellation and revised rate schedule sheets to terminate the Interconnection Agreement.
Filed Date: 08/31/2007.
Accession Number: 20070906–0047.
Comment Date: 5 p.m. Eastern Time on Friday, September 21, 2007.

Docket Numbers: ER07–1348–000.

Applicants: American Electric Power Services Corp.

Description: AEP Texas North Co. submits a notice of cancellation of the West Texas Utilities Service Agreement 13, Tariff.

Filed Date: 09/04/2007.

Accession Number: 20070906–0046.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07–1349–000.

Applicants: Cheyenne Light Fuel & Power Company.

Description: Cheyenne Light, Fuel and Power Co submits Rate Schedule 2 for Short-Term Sales of Test Power, to be effective 10/1/07.

Filed Date: 09/04/2007.

Accession Number: 20070906–0045.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Docket Numbers: ER07–1350–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits a notice of cancellation for an interconnection service agreement that has been superseded.

Filed Date: 09/04/2007.

Accession Number: 20070906–0044.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 25, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–46–002

Applicants: PSEG Fossil LLC

Description: Supplemental Filing of PSEG Nuclear LLC, *et al.*

Filed Date: 09/05/2007.

Accession Number: 20070904–5104.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 26, 2007.

Docket Numbers: ES07–47–002.

Applicants: PSEG Nuclear LLC.

Description: Supplemental Filing of PSEG Nuclear LLC, *et al.*

Filed Date: 09/05/2007.

Accession Number: 20070904–5104.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 26, 2007.

Docket Numbers: ES07–48–002.

Applicants: PSEG Energy Resources & Trade LLC.

Description: Supplemental Filing of PSEG Nuclear LLC, *et al.*

Filed Date: 09/05/2007.

Accession Number: 20070904–5104.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 26, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–18203 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1050–000]

PJM Interconnection, L.L.C.; Notice of Technical Conference

September 10, 2007.

The Commission's August 17, 2007 order in the above-captioned proceeding [1] directed that a technical conference be held to address certain tariff revisions proposed by PJM Interconnection, LLC (PJM), specifically, PJM's proposed revisions to section 5.6.6(d) of Attachment DD of the PJM open access transmission tariff and proposed capacity export charge.

Take notice that a technical conference will be held on Friday, September 28, 2007, at 9:30 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission (FERC), 888 First Street, NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested parties and staff are permitted to attend. For further information please contact Kent Carter at (202) 502–8604 or e-mail *kent.carter@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–18212 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM05–17–000; RM05–25–000]

Preventing Undue Discrimination and Preference in Transmission Service; Supplemental Notice of Technical Conferences

September 10, 2007.

On August 28, 2007, the Commission issued notices scheduling staff technical conferences in the above-captioned proceeding. As stated in the August 28 notice, these technical conferences will review and discuss the draft proposals regarding processes for transmission planning required by the ''Order Extending Compliance Action Date and Establishing Technical Conferences'' issued in this proceeding on July 27, 2007.[1] The Commission hereby provides

[1] PJM Interconnection, LLC, 120 FERC ¶ 61,169 (2007).

[1] *Preventing Undue Discrimination and Preference in Transmission Service*, 120 FERC ¶ 61,103 at P 2 & 5 (2007) (July 27 Order).

In the July 27 Order, the Commission extended until December 7, 2007 the date for transmission providers to submit an Attachment K to their Open Access Transmission Tariff incorporating the transmission planning principles and concepts adopted in Order No. 890. *Preventing Undue*

the following additional information and instruction regarding these conferences, including the hotel conference sites.

The attached agenda details the dates and times of the technical conferences and identifies the companies presenting their draft proposals, and the customer and industry groups to be represented in the stakeholder panels. To the extent a transmission provider is not listed or otherwise represented by a planning group as detailed on the attached agendas, it should contact the staff members listed below as soon as possible. In addition, each transmission provider should e-mail Commission staff with an electronic link to its draft proposal at *890Planning.attachK@ferc.gov* as soon as such proposal is posted on the transmission provider's Web site. The Commission will provide access to links to all draft proposals in the OATT Reform section of the Commission's Web site at *http://www.ferc.gov/industries/electric/indus-act/oatt-reform/draft-attachment-k.asp.*

As provided for in the August 28 notice, those wishing to participate as a panelist and provide feedback on the draft proposals should submit a request form located at *https://www.ferc.gov/whats-new/registration/transmission-planning-speaker-form.asp* by the close of business on September 21, 2007 (Atlanta, GA conference), September 28, 2007 (Boston, MA conference), and October 5, 2007 (Denver, CO conference). In the event a transmission provider or interested party is uncertain as to which technical conference is relevant, such persons should contact staff in advance to discuss the matter.

FOR FURTHER INFORMATION CONTACT: For further information about these conferences, please contact:

Tony Ingram (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8938, *Tony.Ingram@ferc.gov.*

John Cohen (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8705, *John.Cohen@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–18208 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

Discrimination and Preference in Transmission Service, Order No. 890, 72 FR 12266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 at P 444–602 (2007), *reh'g pending.*

To facilitate the development of these filings, the Commission also required transmission providers to post a draft of their Attachment K on or before September 14, 2007, and established a second round of staff technical conferences, the agenda for which is being set in this notice, for the purpose of stakeholder review of those drafts. Additionally, on August 2, 2007, Commission staff placed in the record of this proceeding a White Paper to assist transmission providers in their development of tariff language consistent with the requirements of Order No. 890.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–445–000]

Southern Natural Gas Company; Transcontinental Gas Pipe Line Corporation; Notice of Joint Application for Abandonment

September 11, 2007.

Take notice that on September 5, 2007, Southern Natural Gas Company (Southern) and Transcontinental Gas Pipe Line Corporation (Transco) filed a joint application in abbreviated format pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Commission, for an order permitting and approving abandonment of the transportation services provided pursuant to Transco's Rate Schedule X–169 and Southern's Rate Schedule X–146.

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 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 September 19, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–18253 Filed 9–14–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8469–1]

Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee (ACSERAC)

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Notice of Meeting of the U.S. Environmental Protection Agency's Adaptation for Climate-Sensitive Resources Advisory Committee on October 22 and 23, 2007, in Bethesda, Maryland.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2), notification is hereby given that the U.S. Environmental Protection Agency, Office of Research and Development (ORD) will hold a public meeting of the ACSERAC.

DATES: The meeting will be held on October 22 and 23, 2007. The meeting will begin at 9 a.m. on October 22 and October 23, and adjourn on October 23 at 3 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814. The hotel is accessible on the Metrorail's Red Line at the Bethesda Metro Station.

Public Participation: Members of the public may attend the meeting as observers, and there will be a limited time for comments from the public in the afternoon. Please contact Joanna Foellmer, Designated Federal Official, ACSERAC, no later than October 12 if you wish to make oral comments during the meeting. Requests to make oral

comments must be in writing (via e-mail, fax or ground mail) and received no later than one week prior to the meeting. Space is limited, and reservations will be accepted on a first-come, first-served basis. Please send a copy of your presentation by October 15 to *Foellmer.Joanna@epa.gov* or express mail to Joanna Foellmer, Charles Glover Building, 808 17th Street, NW., 4th Floor, Washington, DC 20006. Regular mail should be addressed to: Joanna Foellmer, Mail Code 8601D, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Agenda: This notice announces a meeting of the ACSERAC (Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee) in the Washington, DC, metropolitan area. The proposed agenda for the face-to-face meeting includes, but is not limited to, presentations by the SAP 4.4 report's Lead authors and the chapter Lead Authors on adaptation options for selected climate-sensitive ecosystems and resources. In addition, there will be extensive discussion by the ACSERAC with respect to their individual and collective assessment of the SAP 4.4 report. Finally, the ACSERAC will evaluate the external comments received during the public comment period.

The meeting is open to the public. Information on services for the disabled may be obtained by contacting Joanna Foellmer at 202–564–3208. Similarly, a draft agenda may be obtained by an e-mail request to Joanna Foellmer at *Foellmer.Joanna@epa.gov* or fax to Joanna Foellmer at 202–565–0061.

SUPPLEMENTARY INFORMATION: The ACSERAC supports the U.S. Environmental Protection Agency (EPA) in its participation in the interagency U.S. Climate Change Science Program (CCSP), specifically in implementation of Goal 4 of the Strategic Plan for the CCSP. Goal 4 is to understand ''the sensitivity and adaptability of different natural and managed ecosystems and human systems to climate and related global changes.'' EPA also helps the CCSP satisfy their requirement to conduct periodic assessments of climate change and variability, as set forth in the Global Change Research Act of 1990. The ACSERAC supports EPA in performing its duties and responsibilities.

The primary responsibility of the ACSERAC is to conduct an expert peer review of the external review draft report entitled: ''Synthesis and Assessment Product 4.4: Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources,'' (SAP 4.4). The ACSERAC will provide advice to the EPA Administrator on the conduct of this study, and within the context of the basic study plan, the ACSERAC will advise on: (1) The specific issues to be addressed; (2) appropriate technical approaches; (3) the usefulness of information provided to decision makers; (4) the quality of the content of the final report; (5) compliance with the Information Quality Act; and (6) other matters important to the successful achievement of the objectives of the study. Additionally, once the Agency completes all responses to comments received from the ACSERAC and the public, the ACSERAC will review the Agency's responses.

EPA has already released the external draft SAP 4.4 report for public review. The **Federal Register** notice (FR72 46610) announcing a forty-five day public comment period was posted on the U.S. Climate Change Science Program (CCSP) Web site (*http://www.climatescience.gov*) on August 21, 2007. This report is accessible at *http://www.epa.gov/ncea* under *Recent Additions* and is linked to the CCSP Web site.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, and logistics for the ACSERAC should be directed to Joanna Foellmer, telephone: 202–564–3208, e-mail: *Foellmer.Joanna@epa.gov*, or mailed to: Joanna Foellmer, Mail Code 8601D, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Express mail should be sent to: Joanna Foellmer, Charles Glover Building, 808 17th Street, NW., 4th Floor, Washington, DC 20006.

Dated: September 11, 2007.

Peter W. Preuss,

Director, National Center for Environmental Assessment, Office of Research and Development.

[FR Doc. E7–18261 Filed 9–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8468–7]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Good Neighbor Environmental Board. The Board meets three times each calendar year at different locations along the U.S.-Mexico border and in Washington, DC. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President on environmental and infrastructure issues and needs within the States contiguous to Mexico. The statute calls for the Board to have representatives from U.S. Government agencies; the States of Arizona, California, New Mexico and Texas; tribal representation; and a variety of non-governmental officials. One purpose of this meeting is hear presentations on local environmental issues as well as the theme selected for the Board's Eleventh Report, natural disasters and the environment. The meeting also will include a public comment session and a business meeting on the second day. A copy of the meeting agenda will be posted at *www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Wednesday, October 3, from 8:30 a.m. to 5:30 p.m. and Wednesday, October 4, from 8 a.m. to 12 noon. It will be preceded by a Board field trip on October 2 to learn about ranching and grazing environmental issues.

ADDRESSES: The meeting will be held in the Guadelupe/Soledad conference room of the Hotel Encanto De Las Cruces, 705 S. Telshor Blvd., Las Cruces, NM 88011. Telephone: (505) 522–4300. It is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, *koerner.elaine@epa.gov,* 202–564–2586, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the Board should be sent to Elaine Koerner, Designated Federal Officer, at the contact information above.

Meeting Access: For information on access or services for individuals with disabilities, please contact Elaine Koerner at the contact information above. To request accommodation of a disability, please contact Elaine Koerner, preferable at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 31, 2007.

Elaine Koerner,

Designated Federal Officer.

[FR Doc. 07–4590 Filed 9–14–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8469–2]

Human Impacts of Climate Change Advisory Committee (HICCAC)

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Meeting of the U.S. Environmental Protection Agency's Human Impacts of Climate Change Advisory Committee (HICCAC) on October 15 and 16, 2007, in Alexandria, Virginia.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the U.S. Environmental Protection Agency, Office of Research and Development (ORD), will hold a public meeting of the Human Impacts of Climate Change Federal Advisory Committee.

DATES: The meeting will be held on October 15 and 16, 2007. The meeting will begin at 9 a.m. on October 15 and 16, and adjourn on October 16 at 3 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, Virginia 22314. The hotel is accessible on the Blue and Yellow lines at the King Street Metro Station.

Public Participation: Members of the public may attend the meeting as observers, and there will be a limited time for comments from the public in the afternoon. Please contact Joanna Foellmer, Designated Federal Official, HICCAC, no later than October 5 if you wish to make oral comments during the meeting. Requests to make oral comments must be in writing (e-mail, fax or mail) and received no later than one week prior to the meeting. Space is limited, and reservations will be accepted on a first-come, first-served basis. Please send a copy of your presentation by October 9 to *Foellmer.Joanna@epa.gov* or express mail to Joanna Foellmer, Charles Glover Building, 808 17th Street, NW., 4th Floor, Washington, DC 20006. Regular mail should be addressed to: Joanna Foellmer, Mail Code 8601D, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Agenda: The notice announces a meeting of the HICCAC (Human Impacts of Climate Change Advisory Committee) in the Washington, DC metropolitan area. The proposed agenda for the face-to-face meeting includes, but is not limited to, presentations by the convening lead author and by the lead authors on the impacts and adaptation of global change on human dimensions, on human health, on human settlements, and human welfare. In addition, there will be extensive discussion by the HICCAC panel with respect to their individual and collective assessment of the SAP 4.6 report. Finally, the panel will evaluate the external comments received during the public comment period.

The meeting is open to the public. Information on services for the disabled may be obtained by contacting Joanna Foellmer at 202–564–3208. Similarly, a draft agenda may be obtained by an e-mail request to Joanna Foellmer at *Foellmer.Joanna@epa.gov* or fax to 202–565–0061.

SUPPLEMENTARY INFORMATION: The HICCAC supports the U.S. Environmental Protection Agency (EPA) in its participation in the interagency U.S. Climate Change Science Program (CCSP), specifically in implementation of Goal 4 of the Strategic Plan for the CCSP. Goal 4 is to understand ''the sensitivity and adaptability of different natural and managed ecosystems and human systems to climate and related global changes.'' EPA also helps the CCSP satisfy their requirement to conduct periodic assessments of climate change and variability, as set forth in the Global Change Research Act of 1990. The HICCAC is in the public interest and supports EPA in performing its duties and responsibilities.

The primary responsibility of the HICCAC is to conduct an expert peer review of the external review draft report entitled: ''Synthesis and Assessment Product 4.6: Analyses of the effects of global change on human health and welfare and human systems,'' (SAP 4.6). The HICCAC will provide advice to the EPA Administrator on the conduct of this study, and within the context of the basic study plan, the HICCAC will advise on: (1) The specific issues to be addressed; (2) appropriate technical approaches; (3) the usefulness of information provided to decision makers; (4) the quality of the content of the final report; (5) compliance with the Information Quality Act; and (6) other matters important to the successful achievement of the objectives of the study. Additionally, once the Agency completes all responses to comments received from the HICCAC and the public, the HICCAC will review the Agency's responses.

EPA has already released the external draft SAP 4.6 report for public review. The **Federal Register** notice (FR72 39798) announcing a forty-five day public comment period was posted on the U.S. Climate Change Science Program (CCSP) Web site (*http://www.climatescience.gov*) on July 20, 2007. This report is accessible at *http://www.epa.gov/ncea* under *Recent Additions* and is linked to the CCSP Web site.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, and logistics for the HICCAC should be directed to Joanna Foellmer, telephone: 202–564–3208, e-mail: *Foellmer.Joanna@epa.gov*, or mailed to: Joanna Foellmer, Mail Code 8601D, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Express mail should be sent to: Joanna Foellmer, Charles Glover Building, 808 17th Street, NW., 4th Floor, Washington, DC 20006.

Dated: September 11, 2007.

Peter W. Preuss,

Director, National Center for Environmental Assessment, Office of Research and Development.

[FR Doc. E7–18262 Filed 9–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2007–0930; FRL–8468–8]

Constitution Road Drum Site Atlanta, DeKalb County, Georgia; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Constitution Road Drum Superfund Site located in Atlanta, DeKalb County, Georgia.

DATES: The Agency will consider public comments on the settlement until October 17, 2007. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received

disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2007–0930 or Site name Constitution Road Drum Superfund Site by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn Paula V. Batchelor.
- *Mail:* Ms. Paula V. Batchelor, U.S. EPA Region 4, SD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–RO4–SFUND–2007–0930. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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 U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: September 5, 2007.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 07–4592 Filed 9–14–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–RO4–SFUND–2007–0929; FRL–8468–9]

Sikes Oil Service Superfund Site Arcade, Jackson County, GA; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Sikes Oil Service Superfund Site located in Arcade, Jackson County, Georgia for publication.

DATES: The Agency will consider public comments on the settlement until October 17, 2007. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2007–0929 or Site name Sikes Oil Service Superfund Site by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, SD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2007–0929. 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 U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: September 5, 2007.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E7–18280 Filed 9–14–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 07–3871]

The Federal Communications Commission's Public Safety and Homeland Security Bureau Launches Disaster Information Reporting System

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the Public Notice, the Federal Communications Commission's (Commission's) Public Safety and Homeland Security Bureau (PSHSB) announces the launch of the newly designed and automated Disaster Information Reporting System (DIRS). DIRS is a voluntary, efficient, web-based system that communications providers can use to report communications infrastructure status and situational awareness information during times of crisis. This will better streamline the reporting process and enable communications providers to share network status information with the Commission quickly and efficiently.

DATES: The Commission launched DIRS on September 11, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Chief, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission at (202) 418–1096 or *Jeffery.Goldthorp@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the PSHSB's action in DA 07–3871, released on September 11, 2007. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Public Notice

The Commission's PSHSB launched a newly designed and automated Disaster Information Reporting System (DIRS) on September 11, 2007. DIRS is a voluntary, efficient, web-based system that communications companies, including wireless, wireline, broadcast, and cable providers, can use to report communications infrastructure status and situational awareness information during times of crisis. This will better streamline the reporting process and enable communications providers to share network status information with the Commission quickly and efficiently.

The creation and implementation of this new system builds on the Commission's longstanding commitment to promoting the safety of life and property through the use of wire and radio communication, as required by the Communications Act of 1934, as amended, and complements the efforts of the Department of Homeland Security's National Communications System (NCS) in support of NCS's role as the primary agency for Emergency Support Function-2 (ESF–2) (Communications) of the National Response Plan. Establishment of this database addresses many of the recommendations submitted by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks regarding the collection of disaster-related outage and other situational awareness information.

DIRS includes data templates for different communications sectors (*i.e.*, wireless, wireline, broadcast, and cable). Participating communications providers will initially log onto the system to input their emergency contact information. Once this is done, participating communications providers that serve areas affected by disasters will be able to voluntarily submit information regarding, *inter alia*, the status of their communications equipment, restoration efforts, power (*i.e.*, whether they are using commercial power, generator or battery), and access to fuel.

Because the information that communications companies input to DIRS is sensitive, for national security and/or commercial reasons, DIRS filings shall be treated as presumptively confidential upon filing. DIRS filings voluntarily report weaknesses in and damage to the national communications infrastructure. The release of this sensitive information to the public could potentially facilitate terrorist targeting of critical infrastructure and key resources. Further, the DIRS filings contain internal confidential information that constitutes trade secrets and commercial or financial information. Public availability of these reports, which contain information the filers themselves do not routinely make public, could competitively harm the filers by revealing information about the types and deployment of their equipment and the traffic that flows across their networks. DIRS filings will, however, be shared with the NCS on a confidential basis.

On July 21, 2007, the Office of Management and Budget (OMB) approved the DIRS information collection under OMB Control Number 3060–1003. This OMB approval expires on July 31, 2010. As the Commission noted in its OMB submission, DIRS is a voluntary program, separate from the mandatory reporting requirements that apply to certain communications providers under part 4 of the Commission's rules, 47 CFR part 4.

The Commission requests that communications providers (wireline carriers, wireless carriers, broadcasters, and cable system operators) that choose to participate in DIRS provide contact information for any and all individuals in each company who would be providing information on the status of communications equipment in the event of a disaster. Contact information includes contact name, company name, phone number, cell phone number, Blackberry/pager number, and e-mail address. This information will be secured by the Commission and protected from public release. Communications providers can accomplish this by accessing DIRS at *https://www.fcc.gov/nors/disaster/* and

obtaining a User ID. Such providers can also access DIRS under e-filing on the Commission's main webpage or on the PSHSB Web page.

When this disaster data collection system is activated in response to a crisis, all contacts in DIRS will be sent an e-mail letting them know the disaster area and the communications providers that are requested to provide data on the status of their communications equipment.

Federal Communications Commission.

Derek K. Poarch,

Bureau Chief, Public Safety and Homeland Security Bureau.

[FR Doc. E7–18296 Filed 9–14–07; 8:45 am]

BILLING CODE 6712–01–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, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) re-authorize the information collection project ''AHRQ Grants Reporting System (GRS).'' 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.

DATES: Comments on this notice must be received by November 16, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room # 5036, Rockville, MD 20850, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''AHRQ Grants Reporting System (GRS)''

AHRQ has identified the need to establish a systematic method for its grantees to report project progress and important preliminary findings for grants funded by the Agency. The proposed system will address the shortfalls in the current reporting process and establish a consistent and comprehensive grants reporting solution for AHRQ. Currently, AHRQ receives grants continuation applications on an annual basis from all grantees. The progress report, which represents a portion of the annual continuation application, is inadequate because it is too infrequent and does not necessarily capture the information that AHRQ requires to respond to internal and external inquiries.

The reporting system will also provide a centralized repository of grants research information that can be used to support initiatives within the Agency's research plans for the future and to support activities such as performance monitoring, budgeting, knowledge transfer as well as strategic planning.

AHRQ currently conduct quarterly conference calls with some grantees. The content, frequency, and focus of these calls vary. In some grant programs, the number of participants on these calls may be so large as to prohibit quarterly updates from all participants in order to avoid creating an extremely lengthy conference call and to allow the Agency to address other important issues during these calls.

The GRS will support the timely collection of important information related to the life cycle of a grant. This information includes: significant changes in project goals, methods, study design, sample or subjects, interventions, evaluation, dissemination, training, key personnel, key preliminary findings; significant problems and resolutions; publications and presentations; tools and products; and new collaborations/partnerships with AHRQ grantees or others conducting related research. Collecting this information in a systematic manner will:

- Promote the transfer of critical information more frequently and efficiently which will enhance the Agency's ability to support research designed to improve the outcomes and quality of health care, reduce its costs, and broaden access to effective services.
- Increase the efficiency of the Agency in responding to ad-hoc information requests, Freedom of Information Act requests, and producing responses related to federally mandated programs and regulations.
- Establish a consistent approach throughout the Agency for information collection about grant progress and a systematic basis for oversight and for facilitating potential collaboration with or among grantees.
- Decrease the inconvenience and burden on grantees of unanticipated ad-hoc requests for information by the Agency in response to particular (one-time) internal and external requests for information.

This project was previously approved by OMB on 11/10/2004. The OMB control number is 0935–0122 and will expire on 11/30/2007.

Data Confidentiality Provisions

Confidential commercial information will be protected in accordance with 18 U.S.C. 1905. Information about Principal Investigators will be maintained in accordance with the Privacy Act, 5 U.S.C. 552a. Also, individuals and organizations will be assured of the confidentiality of their data under Section 934(c) of the Healthcare Research and Quality Act of 1999. The submitted reports will be printed and included in the official file for each grant. All of these files will be retained according to existing agency policies and procedures and archived as required.

The data will be collected using a Web based reporting interface developed specifically for the purpose of collecting information quarterly. To reduce burden and to the extent possible, these forms will be pre-populated with reoccurring information needed to specifically identify the institution, project, principal investigator, and other similar information.

ESTIMATED ANNUAL RESPONDENT BURDEN

Survey	Number of respondents *	Estimated time per respondent in minutes	Estimated total burden hours
1st Quarter	500	10	83.33

ESTIMATED ANNUAL RESPONDENT BURDEN—Continued

Survey	Number of respondents *	Estimated time per respondent in minutes	Estimated total burden hours
2nd Quarter	500	10	83.33
3rd Quarter	500	10	83.33
Annual Total	1500		250

* The estimate for number of respondents for the initial implementation is 100 per quarter. The estimate included in the table assumes wider implementation by the Agency.

Estimated Annual Costs to the Federal Government

The annual cost to the government is $100,000 for licensing, support and maintenance.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the 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 Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Carolyn M. Clancy,

Director.

[FR Doc. 07–4577 Filed 9–14–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b (c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Systems Research.

Date: October 18, 2007 (Open from 8 a.m. to 8:15 a.m. on October 18 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

2. *Name of Subcommittee:* Health Care Research Training.

Date: October 18–19, 2007 (Open from 9 a.m. to 9:15 a.m. on October 18 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

3. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: October 24, 2007 (Open from 8 a.m. to 8:15 a.m. on October 24 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

4. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: October 25–26, 2007 (Open from 8 a.m. to 8:15 a.m. on October 25 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Carolyn M. Clancy,

Director.

[FR Doc. 07–4576 Filed 9–14–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–07AD]

Agency Forms Undergoing Paperwork Reduction Act Review

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

Formative Research to Inform an HIV Testing Social Marketing Campaign for African American Heterosexual Men—New collection—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves formative research to inform the development of the HIV Testing Social Marketing Campaign for African American Heterosexual Men, a CDC-sponsored social marketing campaign aimed at increasing HIV testing rates among young, single, African American men. The study entails conducting focus groups and interviews with a sample of single African American heterosexual men, ages 18 to 44, with less than 4 years of college education to: (1) Explore participants' knowledge, attitudes and beliefs about HIV and HIV testing to inform the development of campaign messages; (2) identify the most motivating approach, supporting data, and key messages for materials development; (3) test creative concepts, potential campaign themes, logos and names; and (4) test creative materials developed based on the findings from the previous phases of the research. Findings from this study will be used by CDC and its partners to inform current and future program activities.

We expect 153 participants to be screened for eligibility annually. Of the 153 participants who are screened, we anticipate that 72 will participate. The 72 participants will be divided; 36 participating in focus groups and 36 participating in interviews. Additionally, all focus group and interview participants will complete a short ''Paper and Pencil'' questionnaire. This is a burden hour reduction from the 60 Day **Federal Register** Notice which estimated the annual number of respondents at 306, with 153 participating; 81 in focus groups and 72 in interviews. There are no costs to the respondents other than their time. The total estimated annual burden hours are 146.

ESTIMATED ANNUALIZED BURDEN HOURS AND BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Screener	153	1	10/60
Focus Group	36	1	2
Interview	36	1	1
Paper and Pencil Survey	72	1	10/60

Dated: September 7, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–18231 Filed 9–14–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0231]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Approval of Medical Devices

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 17, 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 0910–0073. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

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:

Premarket Approval of Medical Devices—21 CFR Part 814 and Food and Drug Administration Modernization Act Sections 201, 202, 205, 208, and 209 (OMB Control Number 0910–0231)—Extension

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth the requirements for premarket approval of certain class III medical devices. Class III devices are either preamendments devices that have been classified into class III, or postamendments devices which are not substantially equivalent to a preamendments device, or transitional devices. Class III devices are devices such as implants, life sustaining or life supporting devices, devices that are of substantial importance in preventing impairment of human health, and devices that otherwise present a potentially unreasonable risk of illness or injury. Most premarket approval application (PMAs) are for postamendments class III devices.

Under section 515 of the act, an application must contain certain specific information, including full reports of all information concerning investigations showing whether the device is reasonably safe and effective. The application should also include a statement of components, ingredients, and properties of the principles of operation for such a device. In addition, the application should also include a full description of the methods used in, and the facilities and controls used for, the manufacture and processing of the device and labeling specimens. The implementing regulations, contained in part 814 (21 CFR part 814), further specify the contents of a PMA for a class III medical device and the criteria FDA sets forth in approving, denying, or withdrawing approval of a PMA as well as supplements to PMAs. The purpose of these regulations is to establish an efficient and thorough procedure for FDA's review of PMAs and supplements to PMAs for certain class III (premarket approval), medical devices. The regulations under part 814 facilitate the approval of PMAs and supplements to PMAs for devices that have been shown to be reasonably safe and effective and otherwise meet the statutory criteria for approval. The regulations also ensure

the disapproval of PMAs and supplements to PMAs for devices that have not been shown to be reasonably safe and effective and that do not otherwise meet the statutory criteria for approval.

The Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) was enacted on November 21, 1997, to implement revisions to the act by streamlining the process of bringing safe and effective drugs, medical devices, and other therapies to the U.S. market. Several FDAMA provisions affect the PMA process, such as section 515(d)(6) of the act. This section provided that PMA supplements were required for all device changes that affect safety and effectiveness of a device unless such changes are modifications to manufacturing procedures or method of manufacture. This type of manufacturing change now requires a 30-day notice, or where FDA finds such notice inadequate, a 135-day PMA supplement.

To make the PMA process more efficient, in the past several years FDA has done the following: (1) Made changes to the PMA program based on comments received, (2) complied with changes to the program mandated by FDAMA and Medical Device User Fee Modernization Act (Public Law 107–250), and (3) worked toward completion of its PMA reinvention efforts.

Respondents to this information collection are persons filing a PMA application or a PMA supplement with FDA for approval of certain class III medical devices. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, Government agency or organizational unit, or other legal entity. These respondents include entities meeting the definition of manufacturers, such as manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments). In addition, hospitals that reuse single use devices (SUDs) are also included in the definition of manufacturers. It is expected that FDA will receive four PMA applications from hospitals that remanufacture SUDs annually. This figure has been included in table 1 of this document, as part of the reporting burden in § 814.15.

In the **Federal Register** of June 28, 2007 (72 FR 35494), 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 BURDEN[1]

Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
21 CFR					
814.15(b)	10	1	10	2	20
814.20(a) through (c) and (e)	48	1	48	668	32,064
814.37	48	1	48	167	8,016
814.39(a)	460	1	460	60	27,600
814.39(d)	70	1	70	6	420
814.39(f)	254	1	254	16	4,064
814.82(a)(9)	34	1	34	135	4,590
814.84(b)	34	1	34	10	340
FDAMA					
201—Agreement Meeting	3	1	3	50	150
202—Expedited Reviews	7	1	7	10	70
205—Determination Meeting	5	1	5	50	250
208—Classification Panel Meetings	19	1	19	30	570
209—100-day Meeting	36	1	36	10	360
Total	1,028	13	1,028	1,214	78,514

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
814(a)(5) and (a)(6)	1,128	1	1,128	17	19,176

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The industry-wide burden estimate for PMAs is based on an FDA actual average fiscal year (FY) annual rate of receipt of 48 PMA original applications, 530 PMA supplements, and 254 30-day notices using FY 2002 through FY 2006 data. The burden data for PMAs is based on data provided by manufacturers by device type and cost element in an earlier study. The specific burden elements for which FDA has data are as follows:

- Clinical investigations: 67 percent of total burden estimate;
- Submission of additional data or information to FDA during a PMA review: 12 percent;
- Additional device development cost (e.g., testing): 10 percent; and
- PMA and PMA supplement preparation and submissions, and development of manufacturing and controls data: 11 percent.

Reporting Burden

The reporting burden can be broken out by certain sections of the PMA regulation as follows:

§ 814.15—Research Conducted Outside the United States

Approximately 20 percent of the clinical studies submitted in support of a PMA application are conducted outside the United States. Each study should be performed in accordance with the ''Declaration of Helsinki'' or the laws and regulations of the country in which the study was conducted. If the study was conducted in accordance with the laws of the country, the PMA applicant is required to explain to FDA in detail the differences between the laws of the country and the ''Declaration of Helsinki.'' Based on the number of PMAs received that contained studies from overseas, FDA estimates that the burden estimate necessary to meet this requirement is 20 hours.

§ 814.20(a) through (c) and (e)—Application

The majority of the 32,064 hourly burden estimate is due in part to this requirement. Included in this requirement are the conduct of laboratory and clinical trials as well as the analysis, review, and physical preparation of the PMA application. FDA estimates that 48 manufacturers, including hospital re-manufacturers of single use devices (SUDs), will be affected by these requirements which are based on the actual average of FDA receipt of new PMA applications in FY 2002 through 2006. FDA's estimate of the hours per response (668), was derived through FDA's experience and consultation with industry and trade associations. In addition, FDA also based its estimate on the results of an earlier study which accounts for the bulk of the hourly burden for this requirement, identified by manufacturers.

§ 814.37—PMA Amendments and Resubmitted PMAs

As part of the review process, FDA often requests PMA applicant to submit additional information regarding the device necessary for FDA to file the PMA or to complete its review and make a final decision. The PMA applicant may, also on their own initiative, submit additional information to FDA during the review process. These amendments contain information ranging from additional test results, re-analysis of the original data set to revised device labeling. Almost all PMAs received by the Agency have amendments submitted during the review process. FDA estimates that 8016 burden hours are necessary to satisfy this requirement.

§ 814.39(a)—PMA Supplements

FDA believes that the amendments mandated by FDAMA for § 814.39(f), permitting the submission of the 30-day notices in lieu of regular PMA supplements, will result in an approximate 20 percent reduction in the total number of hours as compared to regular PMA supplements. As a result, FDA estimates that 27,600 hours of burden are needed to complete the requirements for regular PMA supplements.

§ 814.39(d)—Special PMA Supplements—Changes Being Effected

This type of supplements is intended to enhance the safety of the device or the safe use of the device. The number of PMA supplements received that fit this category averaged 70 per year based on the numbers received from FY 2002 through FY 2006. Because of the minimal data required to be included in this type of supplement, FDA estimates that the burden hours necessary to satisfy this requirement are 420 hours.

§ 814.39(f)—30-day Notice

Under section 515(d) of the act, modifications to manufacturing procedures or methods of manufacture that affect the safety and effectiveness of a device subject to an approved PMA do not require submission of a PMA supplement under § 814.39(a) and are eligible to be the subject of a 30-day notice. A 30-day notice shall describe in detail the change, summarize the data or information supporting the change, and state that the change has been made in accordance with the requirements of part 820 (21 CFR part 820). The manufacturer may distribute the device 30 days after the date on which FDA receives the 30-day notice, unless FDA notifies the applicant within 30 days from receipt of the notice that it is not adequate. FDA estimates the burden to satisfy this requirement is 4,064 hours.

§ 814.82(a)(9)—Postapproval Requirements

Postapproval requirements concern approved PMAs that were not reclassified and require a periodic report. After approval, all PMAs require a submission of an annual report. On average, approximately half of the submitted PMAs (34), require associated postapproval studies, i.e., followup of patients used in clinical trials to support the PMA or additional preclinical information, that is labor-intensive to compile and complete; the remaining PMAs require minimal information. Based on experience and consultation with industry, FDA has estimated that preparation of reports and information required by this section requires 4,590 hours.

§ 814.84(b)—Reports

Postapproval requirements described in § 814.82(a)(7) require submission of an annual report for each approved PMA. FDA estimates that respondents will average about 10 hours in preparing their reports to meet this requirement. This estimate is based on FDA's experience and consultation with industry. Thus, FDA estimates that the periodic reporting burden required by this section will take 340 hours.

Statutory Reporting Burden Estimate (FDAMA)

The total statutory reporting burden under the requirements of FDAMA sections 201, 202, 205, 208, and 209 is estimated to be 1,400 hours. This burden estimate was based on actual real FDA data tracked from January 1, 1998, to the present, and an estimate was also derived to forecast future expectations with regard to this statutory data.

§ 814.82(a)(5) and (a)(6)—Recordkeeping

The recordkeeping burden under this section requires the maintenance of records, used to trace patients, and the organization and indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These records are required only of those manufacturers who have an approved PMA and who had original clinical research in support of that PMA. For a typical year's submissions, 70 percent of the PMAs are eventually approved with 75 percent of these having original clinical trial data. Therefore, approximately 34 PMAs a year (48 annual submissions x 70 percent), would be subject to these requirements. Also, because the requirements apply to all active PMAs, all holders of an active PMA

applications must maintain these records.

PMAs have been required since 1976, and there are 1,128 active PMAs that could be subject to these requirements, based on actual FDA data. Each study has approximately 200 subjects, and at an average of 5 minutes per subject, there is a total burden per study of 1,000 minutes, or 17 hours. The aggregate burden for all 1,128 holders of approved original PMAs, therefore, is 19,176 hours (1,127 approved PMAs with clinical data x 17 hours per PMA).

The applicant determines which records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation (part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions of approval to ensure the device's continuing safety and effectiveness.

Dated: September 11, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–18222 Filed 9–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0347]

Draft Guidance for Industry, Clinical Laboratories, and Food and Drug Administration Staff on In Vitro Diagnostic Multivariate Index Assays; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until October 17, 2007, the comment period for ''Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays'' published in the **Federal Register** of July 26, 2007 (72 FR 41081). That guidance was a revised version of the original draft, which was published on September 7, 2006, with a 90-day comment period that was extended to 180 days. In addition, FDA held a public meeting on the draft guidance in February 2006. FDA is reopening the comment period on the revised draft to allow sufficient time for stakeholder comment.

DATES: Submit written or electronic comments by October 17, 2007.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Draft Guidance for industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Courtney Harper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0694.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 26, 2007 (72 FR 41081), FDA published a notice of availability of a revised draft guidance, ''Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays'' with a 30-day comment period. The In Vitro Diagnostic Multivariate Index Assays (IVDMIAs) guidance document has been the subject of attention, comment, and public discussion for almost a year. The original draft was published on September 7, 2006, with a 90-day comment period. In response to requests for further opportunity to comment, FDA extended the comment period to 180 days and held a public meeting on the guidance document. The second draft, which was published July 26, 2007, incorporated many of the suggested comments on the first draft. Among other things, the second draft simplified the definition of IVDMIAs, and provided a variety of specific examples to assist sponsors in understanding the definition. In light of the opportunities for comment on the first draft, we had originally set a 30-day period for comments on the second draft. The initial comment period closed on August 27, 2007. However, at the request of in vitro diagnostic device stakeholders, the agency has decided to reopen the comment period for an additional 30 days on the ''Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays.''

This draft guidance is intended to provide clarification on FDA's approach to regulation of IVDMIAs.

II. Request for Comments

Following publication of the July 26, 2007, ''Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays,'' FDA received requests to allow interested persons additional time to comment. The requesters asserted that the time period of 30 days was insufficient to respond fully to FDA's specific requests for comments and to allow potential respondents to thoroughly evaluate and address pertinent issues.

III. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on IVDMIAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

IV. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To received ''Draft Guidance for Industry, Clinical Laboratories, and FDA Staff on In Vitro Diagnostic Multivariate Index Assays,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1610 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information

on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

V. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 11, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–18221 Filed 9–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Data System for Organ Procurement and Transplantation Network (42 CFR Part 121, OMB No. 0915–0184): Extension

The operation of the Organ Procurement and Transplantation Network (OPTN) necessitates certain recordkeeping and reporting requirements in order to perform the functions related to organ transplantation under contract to HHS. This is a request for an extension of the current recordkeeping and reporting requirements associated with the OPTN. These data will be used by HRSA in monitoring the contracts for the OPTN and the Scientific Registry of Transplant Recipients (SRTR) and in carrying out other statutory responsibilities. Information is needed to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, to ensure that all qualified entities are accepted for membership in the OPTN, and to ensure patient safety.

ESTIMATED ANNUAL REPORTING AND RECORD KEEPING BURDEN

Section and activity	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
121.3(b)(2)—OPTN membership and application requirements for OPOs, hospitals, and histocompatibility laboratories	40	3	120	15	1, 800
121.3(b)(4)—Appeal for OPTN membership	2	1	2	3	6
121.6(c) (Reporting)—Submitting criteria for organ acceptance	900	1	900	0.5	450
121.6(c) (Disclosure)—Sending criteria to OPOs	900	1	900	0.5	450
121.7(b)(4)—Reasons for Refusal	900	38	34,200	0.5	17,100
121.7(e) —Transplant to prevent organ wastage	260	1.5	390	0.5	195
121.9(b)—Designated Transplant Program Requirements	10	1	10	5.0	50
121.9(d)—Appeal for designation	2	1	2	6	12
Total	954		36,524		20,063

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: September 10, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–18220 Filed 9–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the OMB for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Nurse Faculty Loan Program (NFLP): Annual Operating Report (AOR) Form—NEW

The Annual Operating Report (AOR) provides information on the Nurse Faculty Loan Program (NFLP) funded loan activities. Under Title VIII of the Public Health Service Act, as amended by Public Law 107–205, Section 846A, the Secretary of Health and Human Services (HHS) enters into an agreement with a school of nursing to establish and operate the NFLP fund. HHS makes an

award to the school in the form of a Federal Capital Contribution (FCC). The award is used to establish a distinct account for the NFLP loan fund at the school or is deposited into an existing NFLP fund. The school of nursing makes loans from the NFLP fund to eligible students enrolled full-time in a master's or doctoral nursing education program that will prepare them to become qualified nursing faculty. Following graduation from the NFLP lending school, loan recipients may receive up to 85 percent NFLP loan cancellation over a consecutive four-year period in exchange for service as full-time faculty at a school of nursing. The NFLP lending school collects any portion of the loan that is not cancelled. The lending school deposits monies from loan collection and repayment into the NFLP loan fund to make additional NFLP loans. The school of nursing must keep records of all NFLP loan fund transactions.

The NFLP Annual Operating Report is used to collect information relating to the NFLP loan fund operations and financial activities for a specified reporting period (July 1 through June 30 of the academic year). Participating schools will complete and submit an electronic copy of the AOR annually to provide the Federal Government with current and cumulative information on: (1) The number and amount of loans made, (2) the number of NFLP recipients and graduates, (3) the number and amount of loans collected, (4) the number and amount of loans in repayment, (5) the number of NFLP graduates employed as nurse faculty, and (6) NFLP loan fund receipts, disbursements and other related costs. The NFLP loan fund balance is used with other criteria to determine the annual award to the school.

Once the AOR is completed by the participating school, the AOR will be submitted electronically through the HRSA Electronic Handbook.

The estimate of burden for this form is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Nurse Faculty Loan Program Annual Operating Report (AOR)	150	1	150	8	1200
Total Burden	150	1	150	8	1200

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: September 10, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–18223 Filed 9–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Suppression of Allergic Asthma by Ascaris Antigens

Description of Technology: Available for licensing and commercial development are compositions and methods for suppressing allergic reactions, as well as Th-1 and Th-2 associated immunological diseases, by administering any of the two identified *Ascaris* polypeptide antigens, or active fragments or variants thereof, to the affected subject.

Allergic asthma is characterized by antigen-specific IgE production, reversible airway hyper-reactivity and eosinophilic infiltration of the airways. There is a dramatic increase in the prevalence of allergic disorders in emerging and industrialized countries and studies suggest that the hygienic environment in those countries may not provide allergy-protective mechanisms associated with some forms of infection. Recent studies have found that helminth infection may suppress the development of allergic disease. Helminth infections currently affect over 2 billion people worldwide, causing significant morbidity. The most successful geohelminths are members of the *Ascaris* species, including *A. lumbricoides* and *A. suum,* which are known to infect 1.5 billion people. The inventors studied the modulation of allergic disease mediated by a chronic *A. suum* infection in their murine model of ragweed-induced allergic conjunctivitis and allergic asthma, and demonstrated that the infection prevents allergic inflammation in sites distal from larval migration. This protection was due, in part, to the induction of immunoregulatory cytokines such as IL–10. In further studies, they demonstrated that a cocktail of antigens from the pseudocoelomic fluid (PCF) of *A. suum,* administered during ragweed sensitization, significantly reduced the eosinophil migration into the conjunctiva, pulmonary eosinophilic inflammation, and total lung pathology induced by the ragweed. PCF exposure also reduced the secretion of the pro-allergic cytokines IL–5 and IL–13 in the broncho-alveolar lavage fluid after ragweed exposure. All findings suggest PCF is capable of suppressing the allergic response to a traditional allergen and at multiple tissue sites.

In further studies, the inventors determined that the protection conferred by PCF to allergic inflammation was through a specific first antigenic protein isolated from PCF, results that were confirmed by using the recombinant form of the first antigen.

Furthermore, it is known that Toll-like receptors (TLRs) on dendritic cells (DCs) and other antigen presenting cells recognize specific molecular patterns on invading pathogens, leading to the development of host immunity. A number of pathogens, including helminths, have used pattern recognition by TLRs to modulate host immunity and inflammation to establish a chronic infection. In further studies, the inventors identified a second specific antigenic protein, also isolated from PCF, which can modulate activation of bone marrow derived DCs in response to stimuli with bacterial lipopolysaccharide (LPS); and to stimulate DCs to produce significant increases in IL–10 but not IL–12 upon co-stimulation with LPS. Studies in various genetically deficient mice suggested that this second antigen augments the IL–10 production dependent on one of the TLRs, TLR4. In further studies with the cloned and expressed form of the second antigen, as well as its two domains, the inventors showed that the activity is dependent on domain 2 but not domain 1. The purified second antigen exhibits different properties than unfractionated PCF. PCF administration prevents an initial response from occurring, as it inhibits the initiation of the inflammatory cascade. By contrast, the second antigen can activate DCs and alter cells such that they ultimately suppress responses through the production of IL–10 and can therefore act on the effector phase of the inflammatory response (i.e., modulate a response that is already occurring).

Applications: Suppression of allergic responses to traditional allergens by administering the identified *Ascaris* polypeptide antigens, or active fragments or variants thereof, to the affected subjects. The inventions provide different ways to treat allergic diseases or prevent allergic reactions, rather than merely ameliorating the symptoms. The inventions are also applicable to other Th-1 and Th-2 associated immunological diseases.

Development Status: The technologies are currently in the pre-clinical stage of development.

Inventors: Andrea Keane-Myers *et al.* (NIAID).

Relevant Publications: Manuscripts describing the above technologies will be available as soon as they are accepted for publication.

Patent Status:

U.S. Provisional Application No. 60/902,506 filed 22 February 2007 (HHS Reference No. E–126–2007/0–US–01).

U.S. Provisional Application No. 60/924,537 filed 18 May 2007 (HHS Reference No. E–174–2007/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D, MBA; 301/435–4507; *thalhamc@mail.nih.gov.*

Citrobacter freundii WR7011 as a Vaccine Strain or Source of Vi Capsular Antigen for Protection Against Typhoid Fever

Description of Invention: According to the WHO, typhoid fever remains a serious public health problem throughout the world, with an estimated 16–33 million cases and 500,000 to 600,000 deaths annually. The Vi capsule of *S. typhi*, the causative agent of typhoid fever, is a surface-bound carbohydrate polymer to which antibodies have been shown to protect against typhoid fever. Purification of this polymer from virulent *S. typhi* strains poses a danger to those handling the live organisms. However, an unusual strain of *Citrobacter freundii*, WR7004 was mutated by the inventors to create a strain (WR7011) that makes Vi polysaccharide on its surface. Specifically, the strain was mutated using nitrosoguanidine. *C. freundii* WR7011 makes several times as much Vi polysaccharide as strains of *S. typhi*, is nonpathogenic, and is much safer to work with for Vi production or use as a vaccine strain. The inventors anticipate that this strain of *C. freundii* will reduce costs of purifying the Vi polysaccharide and also provide an increased level of safety during manufacture of the polysaccharide.

Applications and Modality: Synthesis of *S. typhi* Vi polysaccharide.

Market: Research tool useful for vaccine studies and/or vaccine production.

Development Status: The technology is a research tool.

Inventors: Dennis Kopecko and DeQi Xu (CBER/FDA).

Pertinent References:

1. NJ Snellings *et al.* Genetic regulation of variable Vi antigen expression in a strain of *Citrobacter freundii.* J Bacteriol. 1981 Feb;145(2):1010–1017.

2. H–S Houng *et al.* Expression of Vi antigen in *Escherichia coli* K–12: characterization of ViaB from *Citrobacter freundii* and identity of ViaA with RcsB. J Bacteriol. 1992 Sep;174(18):5910–5915.

3. JT Ou *et al.* Specific insertion and deletion of insertion sequence 1-like DNA element causes the reversible expression of the virulent capsular antigen Vi of *Citrobacter freundii* in *Escherichia coli.* Proc Natl Sci USA. 1988 June;85(12):4402–4405.

4. SC Szu *et al.* Vi capsular polysaccharide-protein conjugates for prevention of typhoid fever. J Exp Med. 1987 Nov 1;166(5):1510–24.

Patent Status: HHS Reference No. E–004–2007/0—Research Tool.

Licensing Status: This technology is not patented. The mouse model will be transferred through a Biological Materials License.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The FDA–CBER Laboratory of Enteric and Sexually Transmitted Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Vi polysaccharide from *Citrobacter freundii*. Please contact Dr. Dennis J. Kopecko at 301–496–1893 or (*dennis.kopecko@fda.hhs.gov*) for more information.

Catalytic Domains of [beta](1,4)-galactosyltransferase I Having Altered Donor and Acceptor Specificities, Domains That Promote In Vitro Protein Folding, and Methods for Their Use

Description of Technology: [beta](1,4)-galactosyltransferase I catalyzes the transfer of galactose from the donor, UDP-galactose, to an acceptor, N-acetylglucosamine, to form a galactose-[beta](1,4)-N-acetylglucosamine bond. This reaction allows galactose to be linked to an N-acetylglucosamine that may itself be linked to a variety of other molecules. The reaction can be used to make many types of molecules having great biological significance. For example, galactose-[beta](1,4)-N-acetylglucosamine linkages are very important for cellular recognition and binding events as well as cellular interactions with pathogens, such as viruses. Therefore, methods to synthesize these types of bonds have many applications in research and medicine to develop pharmaceutical agents and improved vaccines that can be used to treat disease.

The present invention is based on the surprising discovery that the enzymatic activity of [beta](1,4)-galactosyltransferase can be altered such that the enzyme can make chemical bonds that are very difficult to make by other methods. These alterations involve mutating the enzyme such that the mutated enzyme can transfer many different types of sugars from sugar nucleotide donors to many different types of acceptors. Therefore, the mutated [beta](1,4)-

galactosyltransferases of the invention can be used to synthesize a variety of products that, until now, have been very difficult and expensive to produce.

The invention also provides amino acid segments that promote the proper folding of a galactosyltransferase catalytic domain and mutations in the catalytic domain that enhance folding efficiency and make the enzyme stable at room temperature. The amino acid segments may be used to properly fold the galactosyltransferase catalytic domains of the invention and thereby increase their activity. The amino acid segments may also be used to increase the activity of galactosyltransferases that are produced recombinantly. Accordingly, use of the amino acid segments according to the invention allows for production of [beta](1,4)-galactosyltransferases having increased enzymatic activity relative to [beta](1,4)-galactosyltransferases produced in the absence of the amino acid segments.

Applications: Synthesis of polysaccharide antigens for conjugate vaccines, glycosylation of monoclonal antibodies, and as research tools.

Development Stage: The enzymes have been synthesized and preclinical studies have been performed.

Inventors: Pradman K. Qasba, Boopathy Ramakrishnan, Elizabeth Boeggeman (NCI).

Patent Status: U.S. and Foreign Rights Available (HHS Reference No. E–230–2002/2).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute's Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of galactose and modified galactose to be linked to an N-acetylglucosamine that may itself be linked to a variety of other molecules. Please contact John D. Hewes, PhD. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Rapid Motion Perception MRI Navigator Method

Description of Technology: Available for licensing and commercial development is a non-breathhold flow sensitive navigator technique for reducing respiratory motion artifacts in magnetic resonance (MR) images. The method, called Rapid Motion Perception (RaMP), tracks bulk translational motion of the heart in real-time. The position of the blood volume is a direct representation of the heart position. RaMP tracks fast-moving blood volume during systole as a marker for the heart position, while suppressing stationary or slow moving spins. This approach allows cardiac navigation in two orthogonal directions simultaneously, eliminates the need to obtain empirical correlations between the diaphragm and the heart, and increases tracking reliability among individual patients. The method uses a spoiled-Fast Low Angle Shot (FLASH) navigator and incorporates an alternating pair of bipolar velocity-encoding gradients. Data at 1.5T indicate that RaMP is capable of correcting bulk motion of the heart over multiple cardiac cycles to within +/−1.43 mm in the superior-inferior direction and +/−0.84 mm in the anterior-posterior direction.

Applications:

Reduction of MR image artifacts due to respiration motion.

Real-time tracking of cardiac motion.

Market: Magnetic Resonance Imaging.

Development Status: Late-stage technology.

Inventors: Vinay M. Pai and Han Wen (NHLBI).

Patent Status: U.S. Patent Application No. 10/244,903 filed 16 Sep 2002 (HHS Reference No. E–164–2002/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Chekesha S. Clingman, Ph.D.; 301/435–5018; *clingmac@mail.nih.gov.*

Collaborative Research Opportunity: The NHLBI is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Lili Portilla at 301–594–4273 or via e-mail at *Lilip@nih.gov* for more information.

Dated: September 7, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–18189 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

New and Improved Chemotherapy Adjuvants: Folate Based Inactivators of *O*^{6}-alkylguanine-DNA alkyltransferase (alkyltransferase)

Description of Technology: *O*^{6}-Benzylguanine derivatives, some *O*^{6}-benzylpyrimidines, and related compounds are known to be inactivators of the human DNA repair protein *O*^{6}-alkylguanine-DNA alkyltransferase (alkyltransferase). This repair protein is the primary source of resistance many tumor cells develop when exposed to chemotherapeutic agents that modify the *O*^{6}-position of DNA guanine residues. Therefore, inactivation of this protein can bring about a significant improvement in the therapeutic effectiveness of these chemotherapy drugs. The prototype inactivator *O*^{6}-benzylguanine is currently in clinical trials in the United States as an adjuvant in combination with the chloroethylating agent 1, 3-bis (2-chloroethyl)-1-nitrosourea (BCNU) and the methylating agent temozolomide. A similar alkyltransferase inactivator, *O*^{6}-(4-bromothenyl) guanine is in clinical trials in the UK.

This technology is directed to the discovery of a new class of potent alkyltransferase inactivators, based on folate ester derivatives of *O*^{6}-benzyl-2′-deoxyguanosine and of *O*^{6}-[4-(hydroxymethyl)benzyl] guanine. All the folate ester derivatives of *O*^{6}-benzyl-2′-deoxyguanosine were able to sensitize human tumor cells to killing by 1, 3-bis (2-chloroethyl)-1-nitrosourea with *O*^{6}-benzyl-3′-O-[γ-folyl]-2′-deoxyguanosine being the most active. The 3′ ester was found to be more potent than the 5′ ester and was more than an order of magnitude more active than *O*^{6}-

benzylguanine, which is currently in clinical trials.

Applications

Promising candidates as chemotherapy adjuvants for the treatment of cancer.

Therapeutic application for drug resistant tumors where acquired resistance is caused by O^6-alkylguanine-DNA alkyltransferase.

Advantages

The folate ester derivatives are highly water soluble.

Conjugation of folic acid to an alkyltransferase inactivating compound should allow targeting of delivery to cells that express folate receptor as many tumor cells are known to do.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Drs. Gary Pauly (NCI), Robert C. Moschel (NCI), Sahar Javanmard (NCI), *et al.*

Patent Status: This technology consists of U.S. Provisional Application No. 60/915,510 foreign equivalents, entitled ''Inactivators of O^6-Alkylguanine-DNA Alkyltransferase'' (HHS Reference No. E–200–2007/0).

Related Technology: HHS Reference No. E–274–2003/0, entitled ''2-Amino-O^4-Substituted Pteridines and Their Use as Inactivators of O^6-Alkylguanine-DNA Alkyltransferase''.

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Adaku Nwachukwu, J.D.; 301/435–5560; *madua@mail.nih.gov.*

Papilloma Pseudovirus for Detection and Therapy of Tumors

Description of Technology: There is extensive literature on the use of viral vectors, particularly those based on the adenovirus and AAV, to increase the potency of anti-tumor gene therapy. However, these approaches have had limited success because of limited anti-tumor effects and unacceptable toxicity. This invention describes the use of papillomavirus pseudoviruses (PsV) as a gene transfer technology and a tumor diagnostic method. Preliminary studies showed that PsV bind to cells that were transplanted with human ovarian tumor (Shin-3) while normal tissues were not affected. PsV does not infect several other normal intact tissues but continues to selectively infect additional cell types that are damaged. Additionally, the inventors have constructed oligoT PsV vectors that can be engineered to express certain cytotoxic genes to induce tumor regression and simultaneous increase human papilloma virus' immunogenicity. This technology could be an effective anti-tumor therapy because it has shown increased infection of compromised cells with an inability to infect normal cells thereby reducing potential toxicity to patients. In addition to a potential anti-cancer therapeutic, this technology could also be used as a diagnostic tool in the detection of tumor masses. Detection can be achieved through the use of fluorescent dye coupled particles of PsV that have preferential binding to tumor tissues and not normal tissues.

Applications

Method to treat and selectively target cancer with limited toxicity.

Method to accurately diagnose cancer.

Anti-tumor therapeutic vaccines.

Anti-tumor cytoxic gene therapy constructs.

Market

An estimated 1,444,920 new cancer cases in 2007.

600,000 cancer deaths in the U.S. in 2006.

It is estimated that market for cancer drugs would double to $50 billion a year in 2010 from $25 billion in 2006.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Jeffrey Roberts, John T. Schiller, Douglas R. Lowy (NCI).

Publications

1. CB Buck, *et al.* Generation of HPV pseudovirions using transfection and their use in neutralization assays. Methods Mol Med. 2005;119:445–462.

2. CB Buck, *et al.* Efficient intracellular assembly of papillomaviral vectors. J Virol. 2004 Jan;78(2):751–757.

Patent Status: U.S. Provisional Application No. 60/928,495 filed 08 May 2007 (HHS Reference No. E–186–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

New Synthetic Variants of 2-(4-isothiocyanatobenzyl)-6-methyldiethylenetriamine Pentaacetic Acid (1B4M–DTPA): Novel Macromolecular MRI Contrast Agents

Description of Technology: The present invention describes the synthesis and use of two protected variants of the 2-(4-isothiocyanatobenzyl)-6-methyldiethylenetriamine pentaacetic acid (1B4M–DTPA) (also known as the commercial bifunctional chelator, tiuxetan), bearing either an isothiocyanate or a succinimidyl ester moiety, respectively. These molecules were synthesized for the following uses: (1) Use in the introduction of the chelator to the N-terminus of peptides, aptamers, PNA, etc. wherein deprotection or cleavage from resin or solid phase support of the product is possible and (2) introduction of the chelator to macromolecular structures such as dendrimer wherein this is accomplished in organic solvents eliminating the gross inefficiency of the prior aqueous methods.

In both uses, the elimination or delay of any aqueous chemistry steps in the synthesis process obviates the possibilities of contamination by spurious metals. Metal contaminations could compromise latter radiolabeling or can also hinder the introduction of paramagnetic ions such as Gd(II1) for MRI applications. The chemistry used in this synthetic process is very flexible and provides the basis for an extensive list of conjugation functional groups to be introduced.

Comparative MR imaging with these dendrimer based molecules revealed equivalent enhancement of the vessels and organs such as the kidney and liver.

Applications

Useful in the conjugation of nearly all peptides for targeting antigens/peptides associated with cancers.

Useful for modification of macromolecules such as dendrimer, carbon tubes, etc., for labeling with radioactive metal ions suitable for imaging and/or therapy and paramagnetics for MRI.

Advantages

The chemistry is very flexible and provides the basis for an extensive list of conjugation functional groups to be introduced.

The elimination of aqueous chemistry steps obviates the possibilities of contamination by spurious metals that could compromise subsequent radiolabeling.

The elimination of aqueous steps aids in the introduction of paramagnetic ions such as Gd(III) for MRI applications.

The general synthesis process provides a procedure for preparing dendrimer-based MR agents with higher yields and efficiency while enhancing versatility.

Benefits: In spite of advances in cancer therapeutics and diagnostics, more than 600,000 cancer deaths are estimated to occur in 2007. Early and accurate detection is a key component of successful clinical management of cancer. This technology can contribute to the development of better MRI agents

for diagnosing cancer and thus improve overall survival and quality of life of patients suffering from cancer.

Inventors: Drs. Martin Brechbiel and Heng Xu (NCI).

Development Status: Synthesis process and data available.

Patent Status: U.S. Provisional Application No. 60/864,503 filed 06 Nov 2006 (HHS Reference No. E–226–2006/0–US–01).

Publication: H Xu, CA Regino, M Bernardo, Y Koyama, H Kobayashi, PL Choyke, MW Brechbiel. Toward improved syntheses of dendrimer-based magnetic resonance imaging contrast agents: New bifunctional diethylenetriaminepentaacetic acid ligands and nonaqueous conjugation chemistry. J Med Chem. 2007 Jul 12;50(14):3185–3193. Epub 2007 Jun 7.

Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov.*

Methods and Compositions for Treating FUS1 Related Disorders

Description of Technology: The FUS1 gene residing in the 3p21.3 chromosome region may function as a tumor suppressor gene. In animal models, disruption of FUS1 is associated with an increased frequency of spontaneous vascular tumors and signs of autoimmune disease. The investigators have in vivo data that demonstrate that FUS1 null mutants show a consistent defect in NK cell maturation that correlate with changes in the expression of IL–15. Injection of IL–15 into FUS1 knockout mice completely rescued the NK cell maturation defect suggesting that FUS1 plays an important role in the development and activation of the mammalian immune system.

Applications

Method to treat cancer, autoimmune diseases, and immune disorders such as HIV.

Method to boost immunity in conjunction with cancer and immune disorder therapies.

Method to diagnose FUS1 related disorders.

Animal model to study anti-tumor response and autoimmunity.

Market

An estimated 1,444,920 new cancer diagnoses in the U.S. in 2007.

600,000 deaths caused by cancer in the U.S. in 2006.

Cancer is the second leading cause of death in United States.

It is estimated that market for cancer drugs would double to $50 billion a year in 2010 from $25 billion in 2006.

An estimated 8.5 million Americans are afflicted with autoimmune diseases.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Michael I. Lerman, *et al.* (NCI).

Publication: AV Ivanova, *et al.* Autoimmunity, spontaneous tumourigenesis, and IL–15 insufficiency in mice with a targeted disruption of the tumour suppressor gene Fus1. J Path. 2007 Apr;211(5):591–601.

Patent Status: PCT Patent Application No. PCT/US2006/026533 (HHS Reference No. E–137–2005/0–PCT–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Basic Research Laboratory is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize cancer and immune disorder therapies Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Tumor Suppressor Genes

Description of Technology: Members of the inhibitor of growth (ING) family of tumor suppressor genes are involved in the regulation of diverse processes including cell cycle progression, apoptosis, and DNA repair as important cofactors of p53. ING members contain a highly evolutionary conserved sequence common in chromatin-regulating proteins, and there are overlapping functions between ING family members in negative regulation of cell growth as well as a dependent regulation between various ING members and p53.

Available for licensing are compositions for new tumor suppressor designated p28ING5, p33ING2, and p47ING3 (pING). Overexpression of these proteins has been shown to inhibit cell proliferation in human cancer cells lines, and these characteristics suggest that they may have important implications in cancer diagnosis and therapy. These compositions include nucleic acids, polypeptides, and antibodies that specifically bind to their respective ING members. Also claimed are cancer diagnostic and treatment methods.

Applications

Methods to treat and diagnose cancer with pING compositions.

Methods to identify pING modulating agents.

Research tool to study cell cycle regulation and p53 pathways. pING compositions.

Market

Cancer is the second leading cause of death in United States.

An estimated 600,000 deaths caused by cancer in 2006.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Curtis C. Harris (NCI), *et al.*

Publications

1. T Okano, *et al.* Alterations in novel candidate tumor suppressor genes, ING1 and ING2 in human lung cancer. Oncol Rep. 2006 Mar;15(3):545–549.
2. H Kataoka, *et al.* ING1 represses transcription by direct DNA binding and through effects on p53. Cancer Res. 2003 Sep 15;63(18):5785–5792.
3. M Nagashima, *et al.* A novel PHD-finger motif protein, p47ING3, modulates p53-mediated transcription, cell cycle control, and apoptosis. Oncogene. 2003 Jan 23;22(3):343–350.
4. M Nagashima, *et al.* DNA damage-inducible gene p33ING2 negatively regulates cell proliferation through acetylation of p53. Proc Natl Acad Sci USA. 2001 Aug 14;98(17):9671–9676.

Patent Status

U.S. Patent No. 6,790,948 issued 14 Sep 2004 (HHS Reference No. E–272–1998/0–US–02)

U.S. Patent Application No. 10/868,270 filed 14 Jun 2004 (HHS Reference No. E–272–1998/0–US–03)

PCT Patent Application No. PCT/US2001/04425 filed 09 Feb 2001 (HHS Reference No. E–254–1999/0–PCT–02)

U.S. Patent Application No. 10/203,532 filed 02 Aug 2002 (HHS Reference No. E–254–1999/0–US–03)

PCT Patent Application No. PCT/US2003/02174 filed 23 Jul 2003 (HHS Reference No. E–300–2001/0–PCT–02)

U.S. Patent Application No. 10/502,431 filed 22 Jul 2004 (HHS Reference No. E–300–2001/0–US–03)

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

Peptide Inhibitor of Cyclin Dependent Kinase 4 (CDK4) Derived From MyoD

Description of Technology: This invention pertains to cell cycle regulation and the activity of the G1 cyclin-dependent kinase 4 (CDK4). The invention describes a 15 amino acid peptide and variants thereof derived from muscle determination factor,

MyoD, which is an inhibitor of the CDK4. CDK4 is one of a number of cyclin-dependent kinases which control progression through the cell cycle through their ability to phosphorylate particular substrates at the correct phase of the cell cycle. CDK4 has been shown to be involved in cell cycle control through its ability to regulate the activity of the retinoblastoma protein, pRb, an activator of genes essential for cell division.

Inhibitors of the cyclin-dependent kinases, such as the peptides described in this invention, prevent cell cycle progression and induce cells to exit the cell cycle into the Go state. The peptides described in this invention prevent the phosphorylation of pRb by CDK4, an obligate step for entry into the cell cycle. Osteosarcomas and habdosarcomas are two types of tumors known to over-express pRb. The inhibitor described in this invention may be useful in treating these cancers or other diseases which have been specifically linked to over-expression of active pRb.

Applications

Method to treat proliferative disorders, including cancer.

Anti-proliferative therapeutics.

Research tool to study the cell cycle.

Advantages: Expression of this peptide either as a fusion protein with GST or GFP results in the cessation of cell growth.

Market

An estimated 1,444,920 new cancer diagnoses in the U.S. in 2007.

600,000 deaths caused by cancer in the U.S. in 2006.

Cancer is the second leading cause of death in the United States.

It is estimated that market for cancer drugs would double to $50 billion a year in 2010 from $25 billion in 2006.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Bruce M. Paterson and Jian-min Zhang (NCI).

Publication: JM Zhang, *et al.* Coupling of the cell cycle and myogenesis through the cyclin D1-dependent interaction of MyoD with cdk4. EMBO J. 1999 Feb 15;18(4):926–933.

Patent Status: U.S. Patent Application No. 10/018,964 filed 11 Apr 2002, claiming priority to 18 Jun 1999 (HHS Reference No. E–153–1998/0–US–03).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute's Laboratory of Biochemistry and Molecular Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the described cdk4 inhibitory peptides or equivalent peptide mimetics. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: September 6, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–18192 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders And Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders And Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: September 30–October 2, 2007.

Time: September 30, 2007, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Susquehanna/Severn Room, Bethesda, MD 20814.

Time: October 1, 2007, 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Time: October 2, 2007, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Susquehanna/Severn Room, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, PhD, Scientific Director, Division of Intramural Research. National Institute Of Neurological Disorders & Stroke, NIH, 35 Convent Drive, Room 6A 908, Bethesda, MD 20892, 301–435–2232, *koretskya@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: September 6, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4566 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who play to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 25–26, 2007.

Open: September 25, 2007, 1 p.m. to 5 p.m.

Agenda: Discussion of program policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6C, Room 10, Bethesda, MD 20892.

Open: September 26, 2007, 9 a.m. to 9:15 a.m.

Agenda: Discussion of program policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6C, Room 10, Bethesda, MD 20892.

Closed: September 26, 2007, 9:15 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6C, Room 10, Bethesda, MD 20892.

Contact Person: Mary E. Kerr, FAAN, RN, PhD, Deputy Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B–05, Bethesda, MD 20892–2178, 301/496–8230, *kerrme@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

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.

In the interest of security, NIH has instituted stringent procedures for entrance on to the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS).

Dated: September 6, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4568 Filed 9–14–07; 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, Institutional Training Grants (T32s).

Date: October 18, 2007.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, Executive Meeting Center—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, PhD, MBA. Scientific Review Administrator, National Institute on Alcohol Abuse And Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–433–2369, *Igunzera@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 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4569 Filed 9–14–07; 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, Health Services and Behavioral Research Review Subcommittee.

Date: October 24–25, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, Executive Meeting Center—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *Igunzera@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 Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS).

Dated: September 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4570 Filed 9–14–07; 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, PAR 05–039/MH Centers for Intervention Development & Applied Research (CIDAR).

Date: October 10, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Megan Libbey, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852, 301–402–6807, *libbeym@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Conflicts of ITVC.

Date: October 10–11, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: David M. Armstrong, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/ Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, MDD and BPD.

Date: October 18–19, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott at Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892, 301–443–1513, *psherida@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Child Psychosocial Interventions.

Date: October 18, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Mary C. Blehar, PhD, 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.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mental Health Centers for Intervention Development and Applied Research (CIDAR).

Date: October 22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

(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 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4571 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: October 10–11, 2007.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: October 10, 2007.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: October 10–11, 2007.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict A.

Date: October 10, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301.435.1388, *rliu@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA–L Conflict A.

Date: October 10, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC

8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–402–2105, *rogersn2@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA–L Conflict B.

Date: October 10, 2007.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–402–2105, *rogersn2@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA–F Conflicts.

Date: October 10–11, 2007.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301.435.1388, *rliu@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA–E Conflict–B.

Date: October 10, 2007.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–435–1388, *rliu@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Institutional Research Training Grants.

Date: November 13, 2007.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel & Executive Meeting Center, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Elaine Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–451–4530.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: November 14–16, 2007.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel & Executive Meeting Center, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Elaine Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–451–4530, *el6r@nih.gov..*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Committee.

Date: November 19, 2007.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–435–1388, *rliu@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Projects.

Date: November 20, 2007.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Associate Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 212, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–435–1388, *rliu@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: September 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4572 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed 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 Center for Research Resources Initial Review Group, Comparative Medicine Review Committee. RIRG–C—Parent Meeting.

Date: October 9–10, 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: John R. Glowa, PhD, Scientific Review Administrator, National Center for Research Resources, or, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, *glowaj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: September 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4573 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel Review PAR–06–211 Data Analysis & Statistical Methodology R03s & R21s.

Date: October 19, 2007.
Time: 9:30 AM to 12:30 PM.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Rebecca Wagenaar Miller, PhD, Scientific Review Administrator, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32G, Bethesda, MD 20892, 301–594–0652, *rwagenaa@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 6, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4564 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Of Allergy And Infections Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Centers for AIDS Research: D–CFAR, CFAR (P30).
Date: October 3–4, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: to review and evaluate grant applications.
Place: Hilton/Washington DC/Rockville, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Division of Extramural Activities. National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301–435–3564, *ec17w@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 6, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4565 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review R13s, R03.
Date: October 12, 2007.
Time: 8 a.m. to 9 a.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 Kelly, Scientific Review Specialist, National Institute of Dental & Crainofacial Res., 45 Center Drive, Natcher Bldg., RM 4AN38F, Bethesda, MD 20892–6402, (301) 594–4809, *mary_kelly@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review R21, R03s.
Date: October 17, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr., 4An32B, Division of Extramural Research, National Inst. of Dental & Crainofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review RFA DE08–003/004, Oral Mucosal Vaccination Against HIV Infection.
Date: October 25, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Mario Rinaudo, MD, Scientific Review Administrator, Scientific Review Branch, National Inst. of Dental & Crainofacial Research, National Institute of Health, 45 Center Dr., Rm. 4AN32A, Bethesda, MD 20892, 301–594–2904, *mrinaudo@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4574 Filed 9–14–07; 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Defense against pathogens.
Date: October 19, 2007.
Time: 11:30 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room # 3118, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vijhs@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 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4575 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Neuroendocrinology, Neuroimmunology and Neurophysiology.

Date: September 26, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neuroscience and Disease.

Date: October 1–2, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Arthritis, Connective Tissue and Skin Sciences.

Date: October 1, 2007.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, 301/435–1776, *davidsoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Electromagnetic Devices.

Date: October 2–4, 2007.

Time: 8 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Antonio Sastre. PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genomics, Computational Biology and Technology Study Section.

Date: October 3–4, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

Date: October 3–4, 2007.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Name of Committee: Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.

Date: October 4–5, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Courtyard Marriott, Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Biomedical Computing and Health Informatics Study Section.

Date: October 5, 2007.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892, (301) 435–1177, *bunnagb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Visual Cortex.

Date: October 5, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 6, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4567 Filed 9–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of

its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the adequacy of two forms FEMA uses to gather certain information about the floodplain management activities of communities that participate in the National Flood Insurance Program (NFIP). The forms are used to gather information about a community's floodplain management regulations, administrative and enforcement procedures, flood insurance studies, and basic information pertaining to names, addresses, and phone numbers of individuals responsible for a community's floodplain management program.

SUPPLEMENTARY INFORMATION: The information gathered on the subject forms pertain to a community's participation in the NFIP. The NFIP was established by the National Flood Insurance Act of 1968 (the Act). Section 1315 of the Act requires the adoption of permanent land use and control measures which are consistent with the comprehensive criteria of land management and use under section 1361. In 44 CFR 59.24 requirements are established for the continued eligibility to participate in the NFIP based upon implementing an adequate community based floodplain management program. The information gathered with the forms is used to evaluate the adequacy of a community's floodplain management program as it relates to continued participation in the NFIP.

Collection of Information

Title: Effectiveness of a Community's Implementation of the NFIP Community Assistance Program Community Assistance Contact (CAC) and Community Assistance Visit (CAV) Reports.

Type of Information Collection: Revision of currently approved collection.

OMB Number: 1660–0023.

Form Numbers: Form 81–68 (Community Assistance Report); Form 81–69 (Community Contact Report).

Abstract: The forms that are the subject of this OMB review, the ''Community Contact Report'' (FF 81–68) and the ''Community Visit Report'' (FF 81–69) are the documents used to record the information gathered during CACs and CAVs. The data obtained from the Community Assistance Contact (CAC) and Community Assistance Visit (CAV) forms information collection effort is used to assist with the management of the NFIP. A major objective of the NFIP is to assure that participating communities are achieving the flood loss reduction objectives of the program. To achieve this objective, FEMA's Mitigation Directorate implemented a process to evaluate the floodplain management assistance needed by communities and how well communities are implementing their floodplain management programs. By determining the assistance needed and how well communities are performing their responsibilities, FEMA can identify, prevent, and resolve floodplain management issues before problems arise that require enforcement actions.

The two key methods FEMA uses in determining community assistance needs are through the CAC and CAV, which serve to provide a systematic means of monitoring community NFIP compliance. Through the CAC and CAV, FEMA can also determine to what extent communities are achieving the flood loss reduction objectives of the NFIP. By providing assistance to communities, the CAC and CAV also serve to enhance FEMA's goals of reducing future flood losses, thereby achieving the cost-containment objectives of the NFIP.

Affected Public: Federal, State, Local, or Tribal Governments.

Estimated Total Annual Burden Hours: 168 hours.

Data collection activity/instrument	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A×B)	Total annual hour burden (E) = (C×D)
FF 81–68 (CAV)	1,000	1	2	1,000	2,000
FF 81–69 (CAC)	2,000	1	1	2,000	2,000
Total	*3,000			3,000	4,000

*The burden estimates proposed in 72 FR 36014, July 2, 2007, have been changed to correct the number of respondents from 56 to 3000. Therefore the estimated cost has been changed from $8,400 to $200,000.

Estimated Cost: The total estimated burden cost of State Officials to complete and review these forms is estimated to be $200,000 annually.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before October 17, 2007.

FOR FURTHER INFORMATION CONTACT: Contact Rachel Sears, Program Specialist, at 202–646–2977 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: September 12, 2007.

John A. Sharetts-Sullivan,

Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–18240 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the

requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: FEMA Public Assistance Program Evaluation and Customer Satisfaction Survey.

OMB Number: 1660–NW32.

Abstract: The purpose of the proposed survey is to measure FEMA's Public Assistance (PA) program performances and achievements against customer service standards of Executive Order 12862 of September 11, 1993, as well as Government Performance and Results Act of 1993 (GPRA) objectivities. Survey results are used to gauge satisfaction levels of PA customers, and make improvements to disaster services that focus on customer satisfaction and program effectiveness.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, local or tribal Governments.

Number of Respondents: 2,500 for survey; 20 for focus group.*

Estimated Time per Respondent: 0.3 hours per survey; 6 hours per focus group.*

Estimated Total Annual Time Burden: 870 hours.*

Annual Frequency of Response: 1.

* The estimate changes from the May 15, 2007 proposed collection, 72 FR 27321, reflect re-estimation of the number of disasters, PA applicants and focus group activities.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before October 17, 2007.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Office of Records Management, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: September 11, 2007.

John A. Sharetts-Sullivan,

Director, Office of Records Management, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–18289 Filed 9–14–07; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1717–DR]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1717–DR), dated August 23, 2007, and related determinations.

DATES: *Effective Date:* August 31, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 31, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18239 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1717–DR]

Minnesota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–1717–DR), dated August 23, 2007, and related determinations.

EFFECTIVE DATE: September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 23, 2007.

Dodge County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18242 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1724–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1724–DR), dated August 31, 2007, and related determinations.

DATES: *Effective Date:* August 31, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 31, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms, flooding, and tornado on August 8, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Marianne C. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following area of the State of New York has been designated as adversely affected by this declared major disaster:

Queens County for Individual Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18235 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1724–DR]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1724–DR), dated August 31, 2007, and related determinations.

EFFECTIVE DATE: September 7, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 31, 2007.

Kings County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18243 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1720–DR]

Ohio; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1720–DR), dated August 27, 2007, and related determinations.

EFFECTIVE DATE: September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 27, 2007.

Hardin and Seneca Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18241 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1720–DR]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1720–DR), dated August 27, 2007, and related determinations.

EFFECTIVE DATE: August 28, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 28, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18292 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1723–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1723–DR), dated August 31, 2007, and related determinations.

DATES: *Effective Date:* August 31, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 31, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, flooding, and tornadoes during the period of May 24 to June 1, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this declared major disaster:

The counties of Bryan, Comanche, Cotton, Logan, Pontotoc, Seminole, Stephens, and Tillman for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18238 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1712–DR]

Oklahoma; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1712–DR), dated July 7, 2007, and related determinations.

EFFECTIVE DATE: September 6, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 2007.

Atoka, Caddo, Coal, Creek, Delaware, Garfield, Garvin, Kay, Kingfisher, Lincoln, Marshall, Mayes, Muskogee, Noble, Okfuskee, Okmulgee, Pushmataha, Washita, and Woods Counties for Individual Assistance.

Alfalfa, Atoka, Caddo, Choctaw, Coal, Craig, Creek, Dewey, Garfield, Garvin, Grant, Harper, Jackson, Johnston, Kay, Kingfisher, Lincoln, Love, McCurtain, Major, Marshall, Mayes, Muskogee, Noble, Okfuskee, Okmulgee, Osage, Pushmataha, Sequoyah, Wagoner, Washita, Woods, and Woodward Counties for Public Assistance.

Blaine, Canadian, Grady, McClain, Nowata, Ottawa, Rogers, and Washington Counties for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category B], limited to direct Federal assistance under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18244 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1709–DR]

Texas; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1709–DR), dated June 29, 2007, and related determinations.

DATES: *Effective Date:* September 6, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 29, 2007.

Milam County for Individual Assistance.

Montague, Stephens, and Wise Counties for Individual Assistance (already designated for Public Assistance, including direct Federal assistance.)

Cottle, Haskell, Hopkins, Madison, McLennan, Milam, and Titus Counties for Public Assistance, including direct Federal assistance.

Taylor County for Public Assistance, including direct Federal assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18288 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1719–DR]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1719–DR), dated August 26, 2007, and related determinations.

DATES: *Effective Date:* August 31, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 31, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18237 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1719–DR]

Wisconsin; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–1719–DR), dated August 26, 2007, and related determinations.

DATES: *Effective Date:* September 6, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of August 26, 2007.

Columbia, Dane, Grant, Green, Iowa, Jefferson, Kenosha, Racine, and Rock Counties for Individual Assistance.

Crawford, La Crosse, Richland, Sauk, and Vernon Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–18277 Filed 9–14–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–30]

Notice of Proposed Information Collection: Comment Request; Automated Clearing House (ACH) Program Application—Title I Insurance Charge Payments System

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian.L.Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Financial Operations Center, Department of Housing and Urban Development, 52 Corporate Circle Albany, NY 12203 telephone (518) 464–4200 x 2806 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Automated Clearing House (ACH) Program Application—Title I Insurance Charge Payments System.

OMB Control Number, if applicable: 2502–0512.

Description of the need for the information and proposed use: This information collection is used to collect data to establish an electronic premium payment method for the Title I Program. This information collection is designed to process the collection of Title I insurance charges electronically in lieu of sending checks and other payment instruments by mail.

Agency form numbers, if applicable: HUD–56150.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The annual number of respondents is 50 for the Automated Clearing House Program Application. The estimated time required for each response is 15 minutes. The frequency of response is on occasion. The total estimated burden hours are 13.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 201.31 of the Title I Regulations, relating to payments of insurance charges, has been amended by the final rule that was established in the **Federal Register** at 60 FR 13854. This rule permits the Secretary to require Title I lenders to pay insurance charges through the ACH program.

Dated: September 4, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E7–18193 Filed 9–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Washita National Wildlife Refuge, Custer County, OK, and Optima National Wildlife Refuge, Texas County, OK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; announcement of public meeting; and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and draft environmental assessment (EA) for the Washita and Optima National Wildlife Refuges (Refuges, NWRs) for public review and comment. In this draft CCP/EA, we describe how we intend to manage these Refuges for the 15-year period beginning when we make the final version of this CCP/EA available.

DATES: To ensure consideration, we must receive your written comments by November 1, 2007. We will hold a public meeting to provide information about the CCP planning process and solicit comments from interested parties; see Public Meeting under **SUPPLEMENTARY INFORMATION** for date, time, and location.

ADDRESSES: Send your comments or requests for more information by any of the following methods. You may also view or drop off comments in person.

- National Wildlife Refuge System, Southwest Region Planning Division Web Site: *http://www.fws.gov/southwest/refuges/Plan/index.html.* Download a copy of the document(s) at *http://www.fws.gov/southwest/refuges/Plan/completeplans.html.*
- E-mail: *john_slown@fws.gov.* Include "Washita and Optima Draft CCP/EA" in the subject line of the message. Specify whether you want to

receive a hard copy or CD–ROM by U.S. mail or an electronic copy by e-mail.

- Fax: 505–248–6874.
- U.S. Mail: John Slown, Conservation Planner, USFWS, R–2 Planning Division, P.O. Box 1306, Albuquerque, New Mexico 87103.
- In-Person Drop-off, Viewing, or Pickup: Call 580–664–2205 to make an appointment during regular business hours at Washita National Wildlife Refuge (NWR), 20834 E. 940 Road, Butler, OK 73625.

FOR FURTHER INFORMATION CONTACT: John Slown, by telephone at 505–248–7458 or by e-mail at *john_slown@fws.gov*, or David Maple, Refuge Manager, by telephone at 580–664–2205.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Washita and Optima Refuges, which we started with a notice of intent to prepare a CCP that appeared in the November 17, 1999, issue of the **Federal Register** (64 FR 62683). For more about the initiation of this process, see that notice. The Washita National Wildlife Refuge was established in 1961 by the authority of the Fish and Wildlife Conservation Act (16 U.S.C. 661–667e) as a management overlay on Bureau of Reclamation lands and waters of Foss Reservoir, for conservation of its wildlife resource. Approximately 10 acres of land acquired through the use of Migratory Bird Conservation Stamp Act funds are to be used as an inviolate sanctuary, or for any other management purpose, for migratory birds (16 U.S.C. 715d [Migratory Bird Conservation Act]).

Comprised of the northern portion of Foss Reservoir, adjacent wetlands, uplands, and the Washita River corridor in western Oklahoma, the 8,075-acre Refuge is managed to provide habitat and food for migrating and wintering populations of geese and ducks in the Central Flyway, contributing to conservation of waterfowl resources. The Refuge has also been managed to provide a diversity of habitats for a wide range of migratory bird species, including the whooping crane (Federally listed as threatened and endangered species), neotropical migratory birds (i.e., birds that breed in the United States or Canada, but migrate to winter ranges in Mexico, Central America, South America, or the Caribbean Islands), and shorebirds. Deer, coyote, bobcat, badger, opossum, and other resident wildlife species thrive on the Refuge as well.

Management efforts at Washita Refuge focus on enhancing wetlands and uplands for migratory birds and other wildlife species.

The Optima National Wildlife Refuge was established in 1975 under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e, as amended), by agreement between the Department of the Interior and the U.S. Army Corps of Engineers. While the original purpose of the 4,333-acre Refuge was provision of wintering and resting habitat for migratory waterfowl of the Central Flyway, the Refuge provides little habitat for migratory waterfowl due to lower than anticipated water impoundment rates in the Optima Reservoir. The Optima Refuge is currently managed for resident wildlife and migratory birds. The lack of water has reduced the potential for waterfowl management. The Refuge provides an island of largely undisturbed habitat for migratory songbirds and resident species including white-tailed deer, coyote, Rio Grande turkey, and scaled quail.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. The National Environmental Policy Act of 1969 requires that Federal agencies analyze and report upon the potential effects of any major proposed actions and range of reasonable alternatives. The draft EA attached to the draft CCP satisfies this requirement.

CCP Alternatives and Our Proposed Action

Priority Issues

During the public scoping process with which we initiated work on this draft CCP, we, the Oklahoma Department of Wildlife Conservation, other partners, and the public raised several priority issues, which our draft CCP addresses. Priority issues included depredation of crops on farms adjacent to Washita Refuge by geese attracted to the Refuge, the need for more complete resource inventory of the biological resources of both Refuges, public pressure for additional recreational opportunities on the Refuges, and the difficulty of managing resources on Optima Refuge with no permanent staff on site. To address these priority issues, we developed and evaluated the following alternatives during the planning process.

Alternatives

Alternative 1, No Action, is current management, or what would occur on the Refuges if no management plans were implemented. Under Alternative 2, the Refuges would be operated at a custodial level; habitat management programs would cease and public access would be closed. Alternative 3 is the proposed action, and includes management actions and public uses that are considered to be the best feasible. Alternative 4 represents a maximum effort alternative, with intensive habitat management actions and maximized public use.

Habitat management activities: Under Alternative 1 Washita Refuge would continue to operate moist soil management areas, prescription fires, and farming for wildlife at the current levels. Under Alternative 1, habitat management on Optima Refuge would be limited to the current level of farming for wildlife and periodic clearing of firebreaks along the Refuge boundaries. Under Alternative 2, there would be no active habitat management at either Refuge. Under Alternative 3, the proposed action, habitat management would include development and implementation of an integrated pest management plan at both Refuges. Farming for wildlife would be continued at both Refuges, but would be comprehensively reviewed for appropriateness and effectiveness. Similarly, moist soil management would be continued at Washita Refuge. Both Refuges would establish annual goals for prairie restoration in areas previously altered by tillage or over-grazing. A program of salt cedar eradication and cottonwood establishment would be implemented at Optima Refuge. Under Alternative 4, habitat management programs at each Refuge would be maximized, and acreage of land farmed for wildlife or managed as moist soil units would be increased.

Public Use Opportunities: Under Alternative 1, No Action, the current

levels of public use and visitor facility development would remain at each Refuge. Washita Refuge would continue to offer waterfowl and deer hunts and would maintain the Centennial Trail, and several other interpretive signs and visitor access parking areas. Optima Refuge would continue to offer upland game and deer archery hunts and passive recreation with extremely limited developed facilities. Under Alternative 2, both Refuges would be closed to the public. Under Alternative 3, the proposed action, Washita Refuge would evaluate additional hunt opportunities, develop a primitive hiking trail with interpretive signs, develop additional interpretive signage, and develop a visitor center on the Refuge administrative site. Optima Refuge would develop additional interpretive signage at existing parking areas. Curriculum materials and other educational and interpretive outreach resources would be developed and distributed to schools and other institutions in the towns surrounding each Refuge. Under Alternative 4, public use opportunities at both Refuges would be maximized. In addition to the programs and features proposed under Alternative 3, Washita NWR would develop additional vehicular access and parking areas, a canoe trail along the Washita River with parking at put-in and take-out points, and 5 miles of interpreted hiking trails. Optima NWR would develop two wildlife viewing platforms overlooking the Refuge and a marked hiking trail with interpretive signage.

Public Availability of Comments

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all comments part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA, and Service and Departmental policies and procedures.

Dated: July 26, 2007.

Christopher T. Jones,

Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. E7–18165 Filed 9–14–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application of Endangered Species Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: We announce our receipt of an application to conduct certain activities pertaining to enhancement of survival of endangered species.

DATES: Written comments on this request for a permit must be received by October 17, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Assistant Regional Director, Fisheries-Ecological Services, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail or by telephone at 303–236–4256. All comments received from individuals become part of the official public record.

SUPPLEMENTARY INFORMATION: The following applicant has requested issuance of an enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Arizona Game and Fish Department, Phoenix, Arizona, TE–163125. The applicant requests a permit to take black-footed ferret (*Mustela nigripes*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: August 24, 2007.

James J. Slack,

Acting Regional Director, Denver, Colorado.

[FR Doc. E7–18218 Filed 9–14–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by October 17, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Sheila Arias, University of Idaho, Moscow, ID, PRT–157271

The applicant requests a permit to import biological samples from ocelot (*Leopardus pardalis*), tiger cat (*Leopardus tigrinus*) and margay (*Leopardus wiedii*) from Profelis-Hacienda Matambu, Puntarenas, Costa Rica for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a five-year period.

Applicant: University of Anthropology, University of Massachusetts, Amherst, MA, PRT–160360

The applicant requests a permit to import biological samples collected

from brown mouse lemurs (*Microcebus rufus*) and greater dwarf lemurs (*Cheirogaleus major*) in Madagascar for the purpose of enhancement of the survival of the species through scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Jay E. Link, Minong, WI, PRT–162071

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Ferdinand & Anton Fercos Hantig, Las Vegas, NV, PRT–073403, 073404

The applicant requests permits to export two captive-born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 073403, Victoria and 073404, Picasso. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: North Slope Borough Department of Wildlife Management, Barrow, AK, PRT–134907

The applicant requests a permit to collect tissue specimens from dead and salvaged walrus (*Odobenus rosmarus*) and polar bears (*Ursus maritimus*) that are either taken in subsistence hunts (up to 100 walrus and 40 polar bears sampled annually) or found dead and stranded in the wild (up to 20 walrus and 10 polar bears sampled annually) for the purpose of scientific research on the health status of the species' population stocks. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Richard L. Bodkin, Remsemburg, NY, PRT–162183

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal, noncommercial use.

Applicant: William Katen, Patchoque, NY, PRT–162184

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal, noncommercial use.

Applicant: Alan Walter Maki, Alpine, WY, PRT–154550

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound bear population in Canada for personal, noncommercial use.

Dated: August 24, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–18279 Filed 9–14–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Call for Nominations for the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Wild Horse and Burro Advisory Board Call for Nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for three members to the Wild Horse and Burro Advisory Board. The Board provides advice concerning management, protection and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

DATES: Nominations should be submitted to the address listed below no later than November 1, 2007.

ADDRESSES: National Wild Horse and Burro Program, Bureau of Land Management, Department of the Interior, P.O. Box 12000, Reno, Nevada 89520–0006, Attn: Ramona DeLorme; FAX 775–861–6618.

FOR FURTHER INFORMATION CONTACT: Don Glenn, Division Chief, Wild Horse and Burro Program, (202) 452–5082. Individuals who use a telecommunications device for the deaf (TDD) may contact Ramona DeLorme at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Nominations for a term of three years are needed to represent the following categories of interest:

Wild Horse and Burro Advocacy, Veterinarian Medicine, General Public Interest

Any individual or organization may nominate one or more persons to serve on the Wild Horse and Burro Advisory Board. Individuals may also nominate themselves for Board membership. All nomination letters/or resumes should include the nominees: (1) Name, address, phone, and e-mail address if applicable; (2) category(s) for consideration (i.e. wild horse and burro advocacy; veterinarian medicine, or general public interest; (3) present occupation; (4) explanation of qualifications to represent their designated constituency or category of interest; (5) nominating organization, individual or by self; and (6) list of references and letters of endorsement by qualified individuals.

As appropriate, certain Board members may be appointed as Special Government Employees. Special Government Employees serve on the board without compensation, and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR part 2634. Nominations are to be sent to the address listed under **ADDRESSES**, above.

Each nominee will be considered for selection according to their ability to represent their designated constituency, analyze and interpret data and information, evaluate programs, identify problems, work collaboratively in seeking solutions and formulate and recommend corrective actions. Pursuant to Section 7 of the Wild Free-Roaming Horses and Burros Act, Members of the Board cannot be employed by either Federal or State Government. Members will serve without salary, but will be

reimbursed for travel and per diem expenses at current rates for Government employees. The Board will meet no less than two times annually. The Director, Bureau of Land Management may call additional meetings in connection with special needs for advice.

Dated: August 1, 2007.

Bud Cribley,

Deputy Assistant Director, Renewable Resources and Planning.

[FR Doc. E7–18274 Filed 9–14–07; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–020–1610–DP–088L]

Announcement That BLM–Alaska Has Discontinued Its Planning Efforts for the South Portion of the National Petroleum Reserve—Alaska Integrated Activity Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to discontinue planning efforts for the South NPR–A.

SUMMARY: The Bureau of Land Management (BLM), Alaska State Office, is discontinuing preparation of the Integrated Activity Plan (IAP) for the South portion of the National Petroleum Reserve—Alaska (NPR–A) and its accompanying Environmental Impact Statement (EIS).

DATES: Planning activities will officially cease with publication of this notice.

FOR FURTHER INFORMATION, CONTACT: Bob Schneider (907–474–2216), Lon Kelly (907–474–2368) or Mike Kleven (907–474–2317) by phone or by mail at 1150 University Avenue, Fairbanks Alaska, 99708–3844.

SUPPLEMENTARY INFORMATION: The planning area for the South NPR–A Integrated Activity Plan/Environmental Impact Statement includes approximately 9.2 million acres within the southwestern portion of the National Petroleum Reserve—Alaska. The planning effort was initiated with a Notice of Intent to Plan published June 15, 2005. Although the formal scoping period ended in August 2005 and a scoping report was finalized in November of 2005, further development of the plan was suspended to allow the North Slope Borough (a cooperating agency) to develop a ''community-based'' management alternative. As part of its effort, the Borough conducted several public meetings and submitted a Community Based Planning Report to the BLM in January 2007. Evident from the Borough's report and the BLM's own scoping efforts is the high level of concern on the part of North Slope residents regarding the potential impacts of oil and gas activity on subsistence resources, especially the Western Arctic Caribou Herd, whose primary calving area is within the South NPR–A planning area. The Bureau's resource assessments indicate that the South NPR–A planning area contains limited oil reserves—approximately 2.1 percent of the undiscovered oil in the NPR–A. Although the area contains an estimated 27 percent of the NPR–A's undiscovered gas reserves, there is no transportation system to move the gas to market.

The BLM places great emphasis on public participation during land use planning and has listened carefully to the concerns of the people of Alaska's North Slope. In consideration of these concerns and the practicality of energy development, the BLM is discontinuing the South NPR–A planning effort at this time.

Sharon K. Wilson,

Acting State Director.

[FR Doc. E7–18267 Filed 9–14–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region, Beaufort Sea and Chukchi Sea, Proposed Oil and Gas Lease Sales for Years 2007 to 2012

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Correction of the Call for Information and Nominations and Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: On August 23, 2007, pursuant to 30 CFR 256 and 40 CFR 1501.7 as a matter of information to the public, the MMS published in the **Federal Register** a Call for Information and Nomination and Notice of Intent to Prepare an EIS for the Beaufort Sea and Chukchi Sea OCS planning areas. The Call is the initial step of a multiple sale process that incorporates planning and analysis for the Alaska lease sales included in the proposed final OCS Oil and Gas Leasing Program 2007–2012. We inadvertently omitted a page-size map of the Beaufort Sea Planning Area which should have accompanied a page-size map of the Chukchi Sea Planning Area and instead included two duplicate page-size maps of the Chukchi Sea Planning Area. The correct Beaufort Sea Planning Area map accompanies this notice.

DATES: Nominations and Information must be received no later than October 9, 2007. This correction is effective as of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Please contact Fred King at (907) 334-5271 in MMS's Alaska OCS Region, 3801 Centerpoint Drive, Ste. 500, Anchorage, AK 99503–5823.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register** on August 23, 2007 (72 FR 48295), the Call contains an error that is in need of correction.

Correction of Publication

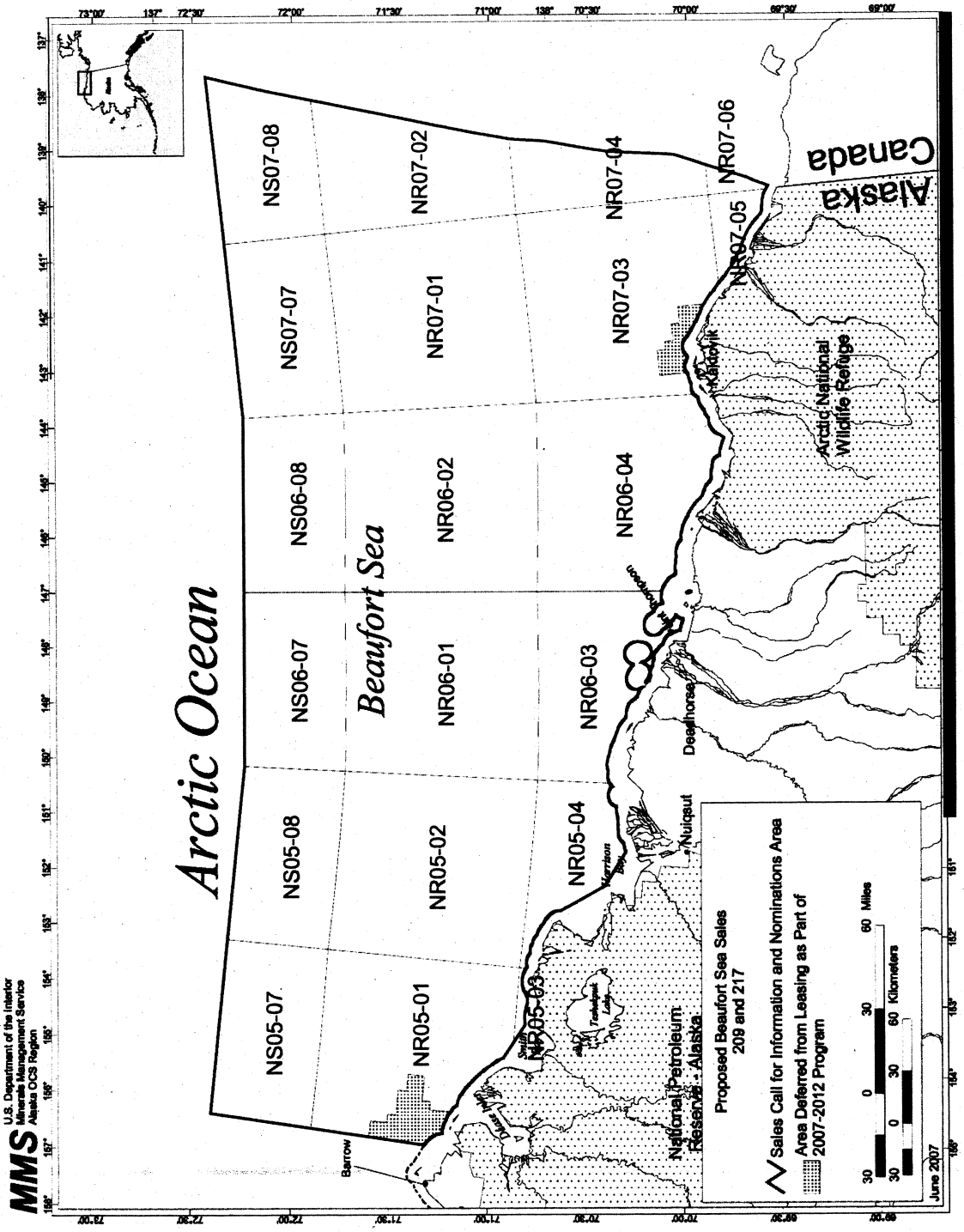
Accordingly, the publication on August 23, 2007 (72 FR 48295) is corrected as follows: On page 48300, the accompanying map titled, ''Proposed Beaufort Sea Sales 209 and 217'' replaces the duplicate map titled ''Proposed Chukchi Sea Sales 212 and 221.''

Dated: September 6, 2007.

Randall B. Luthi,

Director, Minerals Management Service.

BILLING CODE 4310–MR–P



[FR Doc. 07–4586 Filed 9–14–07:8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

National Park Service

30 Day Notice of Submission to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (OMB # 1024–XXXX).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before October 17, 2007.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB # 1024–XXXX), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *oira_docket@omb.eop.gov.* Please also send a copy of your comments to Susan Johnson, Air Resources Division, NPS, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225; or electronicallyat *Susan_Johnson@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Johnson, Air Resources Division, NPS, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225; or via phone at 303/987–6694; or via fax at 303/969–2822; or via e-mail address at *Susan_Johnson@nps.gov.* You are entitled to a copy of the entire ICR package free-of-charge.

Comments Received on the 60-Day ***Federal Register*** *Notice:* The NPS published a 60-Day Notice to solicit public comments on this ICR in the **Federal Register** on October 10, 2006 (Vol. 71, No. 195, Page 59521–59522). The comment period closed on December 11, 2006. The NPS received one comment as a result of the publication of this 60-Day **Federal Register** Notice.

Comment: The commenter questioned why the visibility study was necessary. The commenter noted that regulations that protect air quality are already in place, but are not stringent enough or inadequately enforced. The commenter also added that the most important air quality-related issue is human health, particularly the health of children.

Response: Regulations to protect and improve air quality are currently in place, and new regulations may be proposed in the future. Periodic economic information is necessary to determine whether these regulations are efficient. Visibility is a valued component of air quality, but current information is outdated, and lacks the benefit of recent advances in measuring such values. The information proposed in this collection will assist regulators in making better-informed air policy decisions. Human health related issues are outside the purview of this proposed effort, but are well recognized as the predominant economic benefit of improved air quality.

SUPPLEMENTARY INFORMATION:

Title: Visibility Valuation in National Parks and Wilderness Areas: Pre-Test and Pilot Test.

Bureau Form Number(s): None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New Collection.

Description of Need: The Clean Air Act includes provisions designed to maintain and enhance visibility at national parks and wilderness areas (sections 169A, 169B, and 110(a)(2)(j)). The NPS is directed by its Organic Act to ''conserve the scenery * * * unimpaired for the enjoyment of future generations'' (16 U.S.C. 1); and the Clean Air Act charges the NPS with an ''affirmative responsibility to protect air quality related values (including visibility)'' (42 U.S.C. 7475(d)(2)(B)). Therefore, the NPS believes it is imperative that the value of visibility changes is adequately represented in cost-benefit analyses related to State and Federal efforts that may affect visibility (including the Regional Haze Rule, 40 CFR Part 51). Although several studies were conducted to estimate visibility benefits in the 1970s and 1980s, methodologies for estimating the benefits of improvements in environmental goods have advanced significantly since that time. Furthermore, baseline visibility conditions in national parks and wilderness areas have changed significantly over the last few decades. As a result, updated estimates of benefits are required.

Current evaluation of Federal and State air quality legislation or regulations, as well as regional plans or policies that impact NPS-managed areas, is based on visibility valuation information in Chestnut and Rowe, 1990 (e.g., see EPA, 2005). The vintage of this study aside, several limitations have been identified by regulators and stakeholders alike, including its limited sample frame (EPA, 2005; Leggett *et al.,* 2004). Thus, the NPS seeks current visibility valuation information that will permit accurate evaluation of programs and policies affecting visibility in NPS-managed areas.

The NPS plans to conduct a nationwide stated-preference survey to estimate the value of visibility changes in national parks and wilderness areas. Stated-preference surveys use carefully designed questions to elicit respondents' willingness to pay for improvements in environmental quality. A general population stated-preference survey is required in this case, as many U.S. citizens may be willing to pay to improve visibility at national parks and wilderness areas, even if they do not use these areas. Stated-preference surveys are the only methodology available to estimate these non-use values. But to ensure that the nationwide survey is unbiased and readily understood by respondents, and that the likely effect of non-response on benefit estimates is known, the pre-test and pilot test must first be conducted.

The pre-testing will be done through focus groups, which will be used to develop and refine a survey instrument for the pilot study. Twelve focus groups will be conducted, with approximately 10 participants in each group (120 in total). Thus, a sufficient number of responses will be gathered to evaluate the information presentation, reliability, internal consistency, response variability, and other properties of the draft survey. Results will be used to make improvements to the survey instrument. NPS will proceed iteratively, modifying the draft survey instrument after each focus group to ensure that the wording of the questions is clear and unbiased, and effectively addresses the relevant issues.

The pilot study will be designed to account for the potential impact of mail survey non-response on benefit estimates. The pilot study will involve a split-sample comparison between a mail and in-person survey. Respondents will be asked to complete the survey instrument developed during the pre-testing stage. The results will ultimately be used to adjust the benefit estimates obtained in the nationwide survey for potential non-response bias. The final content of the pilot survey instrument will depend on the pre-testing results. At a minimum, the survey will describe the characteristics of various visibility improvement programs and ask respondents to select a preferred program. The survey will also include socio-demographic questions and

questions designed to evaluate the respondents' motivation in selecting a preferred program. Surveys will be conducted with approximately 800 individuals.

For this pilot study, 16 neighborhoods will be selected in two metropolitan areas (Phoenix, AZ and Syracuse, NY). Each neighborhood sample will be split into two groups, with 50 households assigned to a mail survey group and 50 households assigned to an in-person survey group. The in-person survey will be conducted in a manner that minimizes the differences between the two survey modes.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Frequency of collection: Once.

Description of Respondents: Residents of Atlanta, GA, Chicago, IL, Sacramento, CA (focus groups) and Phoenix, AZ and Syracuse, NY (response rate pilot study).

Estimated average number of respondents: Focus groups: 1,200 in recruitment and 120 in pre-testing activities. Pilot study: 480 mail refusals, 320 in-person refusals, and 800 respondents.

Estimated average number of responses: 900 (120 responses for focus groups; 800 responses for pilot study).

Estimated average time burden per respondent: Focus groups: 3 minutes per recruitment, 30 minutes traveling to focus group, and 2 hours for participating in focus group. Pilot study: 5 minutes per mail refusal, 3 minutes per in-person refusal, and 24 minutes per respondent.

Frequency of response: 1 time per respondent.

Estimated total annual reporting burden: 736 hours.

Dated: September 10, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–4589 Filed 9–14–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement for Agate Fossil Beds National Monument, Nebraska

AGENCY: National Park Service, Department of the Interior.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for a General Management Plan (GMP) for the Agate Fossil Beds National Monument (Monument). The GMP will prescribe the resource conditions and visitor experiences that are to be achieved and maintained at the Monument over the next 15 to 20 years.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS and obtain suggestions and information from other Agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited. Participation in the planning process will be encouraged and facilitated by various means, including newsletters and public meetings. The NPS will conduct public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters.

ADDRESSES: Additionally, if you wish to comment on any issues associated with the GMP, you may submit your comments by any one of several methods. You may mail or hand-deliver comments to the Superintendent, Agate Fossil Beds National Monument, 301 River Road, Harrison, Nebraska 69346–2743. You also may provide comments electronically by entering them into the NPS's Planning, Environment, and Public Comment Web site *http://parkplanning.nps.gov.* Information will be available for public review and comment from the Office of the Superintendent at the above address.

Requests to be added to the project mailing list should be sent by mail to Pamela Carey, Agate Fossil Beds National Monument, 301 River Road, Harrison, Nebraska 69346–2743, by telephone 308–668–2211 or by e-mail to *Pamela_Carey@nps.gov.*

Before including your address, telephone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comments (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, or organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Superintendent Blanca Stransky, Agate Fossil Beds National Monument, 301 River Road, Harrison, Nebraska 69346–2743, telephone 308–668–2211.

SUPPLEMENTARY INFORMATION: Agate Fossil Beds National Monument, located in western Nebraska, was established in 1965 to preserve paleontological and geological sites and to protect and exhibit a collection of American Indian artifacts. The park is currently operating under a 1965 Master Plan, which is outdated because of several additions to the infrastructure that require new management direction. The park also needs to identify major program areas, provide a context for activities, and program planning.

The GMP will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the Monument over the next 15 to 20 years. The clarification of what must be achieved according to law and policy will be based on review of the unit's purpose, significance, special mandates, and the body of laws and policies directing park management. Based on determinations of desired conditions, the GMP will outline kinds of resource management activities, visitor activities, and appropriate future development. A range of reasonable management alternatives will be developed through this planning process and will include, at a minimum, a no-action alternative, and a preferred alternative. To facilitate sound analysis of environmental impacts, the NPS is gathering information necessary for the preparation of an associated EIS.

Dated: July 20, 2007.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. E7–18219 Filed 9–14–07; 8:45 am]

BILLING CODE 4312–BR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Advisory Commission; Notice of Public Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the National Capital Memorial Advisory Commission (the Commission) will be held on Tuesday, October 23, 2007, at 1:30 p.m., at the National Building Museum, Room 312, 401 F Street, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and its environs. In addition to discussing general matters and conducting routine business, the Commission will review the status of legislative proposals intoduced in the 110th Congress to establish memorials in the District of Columbia and its environs, as follows:

Action Items

(1) Legislation currently under consideration by the 110th Congress.

H.R. 3026, to authorize the Military Spouse Legacy Association, Inc., to establish a commemorative work on Federal land in the District of Columbia and its environs to honor all those who have put their country first as military spouses throughout our Nation's history.

Other Business

(1) General matters and routine business.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission.

DATES: Tuesday, October 23, 2007.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, by telephone at (202) 619–7097, by e-mail at *nancy_young@nps.gov*, by telefax at (202) 619–7420, or by mail at the National Capital Memorial Advisory Commission, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC and its environs.

The members of the Commission are as follows:

Director, National Park Service.
Administrator, General Services Administration.
Chairman, National Capital Planning Commission.
Chairman, Commission of Fine Arts.
Mayor of the District of Columbia.
Architect of the Capitol.
Chairman, American Battle Monuments Commission.
Secretary of Defense.

Dated: August 24, 2007.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 07–4588 Filed 9–14–07; 8:45 am]

BILLING CODE 4312–JK–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 1, 2007. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 2, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

DISTRICT OF COLUMBIA

District of Columbia

Asbury, Francis, Memorial, (Memorials in Washington, DC) Reservation 309-b, 16th & Mt. Pleasant Sts., NW., Washington, 07001052.

Cuban Friendship Urn, (Memorials in Washington, DC) Reservation 332, Ohio Dr. at 14th St. Bridge SW., Washington, 07001053.

Gibbons, James, Cardinal, (Memorials in Washington, DC) Reservation 309–G, 16th St. & Park Rd., NW., Washington, 07001051.

Gompers, Samuel, Memorial, (Memorials in Washington, DC) Massachusetts Ave., 10th & L Sts., NW., Reservation 69, Washington, 07001054.

Hahnemann, Samuel, Monument, (Memorials in Washington, DC) Reservation 64, Massachusetts & Rhode Island Aves. at Scott Cir., NW., Washington, 07001055.

Longfellow, Henry Wadsworth, Memorial, (Memorials in Washington, DC) Reservation 150, Connecticut Ave., M & 18th Sts., NW., Washington, 07001056.

Marconi, Guglielmo, Memorial, (Memorials in Washington, DC) Reservation 309A, 16th & Lamont Sts., NW., Washington, 07001057.

Newlands, Francis Griffith, Memorial Fountain, (Memorials in Washington, DC) Chevy Chase Cir., Connecticut & Western Aves., NW., (Res. 335A), Washington, 07001058.

Pennsylvania Avenue National Historic Site, Roughly bounded by Constitution Ave., 15th, F & 3rd Sts., Washington, 07001050.

Temperance Fountain, (Memorials in Washington, DC) 7th St. & Indiana Ave., NW., Washington, 07001061.

Titanic Memorial, (Memorials in Washington, DC) Reservation 717, SW Waterfront Park, Water & P Sts., SW., Washington, 07001060.

Union Station Plaza and Columbus Fountain (Boundary Increase), (Memorials in Washington, DC) Massachusetts, Louisiana & Delaware Aves. & 1st St., NW., Washington, 07001062.

Webster, Daniel, Memorial, (Memorials in Washington, DC) Reservation 62, Massachusetts & Rhode Island Aves. at Scott Cir., NW., Washington, 07001063.

de San Martin, General Jose, Memorial, (Memorials in Washington, DC) Reservation 106, Virginia Ave. & 20th St., NW., Washington, 07001059.

FLORIDA

Hillsborough County

Lamb, A.M., House, 2410 W. Shell Rd., Ruskin, 07001049.

KANSAS

Douglas County

Oread Historic District, (Lawrence, Kansas MPS) Roughly between W. 9th & 12th Sts. & the alleys behind Louisiana & Kentucky Sts., Lawrence, 070010.

Ellsworth County

Ellsworth Downtown Historic District, Generally including blks. between N Main & 3rd Sts. from Lincoln to Kansas Aves. & the W. side of Kansas Ave., Ellsworth, 07001065.

Johnson County

Lanter, Franklin R., House, 562 W Park, Olathe, 07001066.

McPherson County

Power Plant No. 1, 414 W. Elizabeth, McPherson, 07001067.

Scott County

Battle of Punished Woman's Fork, Address Restricted, Scott City, 07001068.

Sedgwick County

Brown Building, 105 S. Broadway St., Wichita, 07001069.
Farmer's and Banker's Historic District, 1st & Market Sts., Wichita, 07001070.
Jackman, C.M., House, 158 N. Roosevelt, Wichita, 07001071.

Wyandotte County

Schleifer-McAlpine House, 608 Splitlog Ave., Kansas City, 07001072.

MARYLAND

Montgomery County

Glenview Farm, 603 Edmonston Dr., Rockville, 07001073.

MISSOURI

St. Louis Independent City

Endicott-Johnson Shoe Distribution Plant, 1132 Spruce St., St. Louis, 07001074. St. Mark the Evangelist Catholic Church, Convent and Academy, 1313 Academy Ave. & 5100 Minerva Ave., St. Louis, 07001075.

NORTH CAROLINA

Ashe County

West Jefferson Historic District, Roughly bounded by State St., 3rd Ave., 2nd St. & Wilton Ave., West Jefferson, 07001076.

OREGON

Washington County

Manning-Kamna Farm, 29375 NW., Evergreen Rd., Hillsboro, 07001077.

PENNSYLVANIA

Bucks County

Craven Hall, 599 Newton Rd. (Warminster Township), Warminster Heights, 07001078.

Montgomery County

Schall, William and Caroline, House, 100 Main St., Green Line, 07001079.

Venango County

Connely-Holeman House, 317 Chestnut St., Pleasantville Borough, 07001080.

RHODE ISLAND

Providence County

Downtown Providence Historic District (Boundary Increase), Along Friendship, Pine & Richmond Sts., Providence, 07001081.

SOUTH CAROLINA

Charleston County

Bache, Alexander, U.S. Coast Survey Line, 8377 State Cabin Rd., Edisto Island, 07001082.

Richland County

Cornwell, Harriet M., Tourist House, (Segregation in Columbia, South Carolina MPS) 1713 Wayne St., Columbia, 07001083.

WISCONSIN

Eau Claire County

Drummond Business Block, 409–417 Galloway St., Eau Claire, 07001084.
Union Auto Company, 505 S. Barstow St., Eau Claire, 07001085.
Water Street Historic District, 402–436 & 401–421 Water St., Eau Claire, 07001086.

A request for removal has been made for the following resource:

PENNSYLVANIA

Lancaster County

Watt and Shand Department Store, 2–12 E. King St., 23–27 Penn Sq., 1–21 S. Queen St., 18–24 S. Christian St. Lancaster, 99000322.

[FR Doc. E7–18200 Filed 9–14–07; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–017]

Government In the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 20, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1123 (Preliminary) (Steel Wire Garment Hangers from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 28, 2007.)
5. Inv. No. 731–TA–932 (Review) (Folding Metal Tables and Chairs from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 28, 2007.)
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 12, 2007.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–18230 Filed 9–14–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0061]

Gear Certification Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in the Gear Certification Standard (29 CFR part 1919).

DATES: Comments must be submitted (postmarked, sent, or received) by November 16, 2007.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and

attachments to the OSHA Docket Office, Docket No. OSHA–2007–0061, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0061). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The ICR addresses the burden hours associated with gathering information to complete the OSHA–70 Form and the cost associated with completing the OSHA–71 and OSHA–72 forms that are required by OSHA's maritime employment regulations. These maritime regulations require employers to have an OSHA–71 Form issued for equipment found to be in a safe condition and the OSHA–72 Form issued for equipment that is found to be unsafe. These forms are issued by third parties who have applied to OSHA, on the OSHA–70 Form, for accreditation to certify gear used in maritime employment.

The OSHA–70 Form is used by applicants seeking accreditation from OSHA to be able to test or examine certain equipment and material handling devices as required under the maritime regulations, part 1917 (Marine Terminals), and part 1918 (Longshoring). The OSHA–70 Form application for accreditation provides an easy means for companies to apply for accreditation.

The OSHA–71 Form is required to be issued by those accredited by OSHA to employers in the maritime industry to make it known that certain equipment and material handling devices are safe to use or operate.

The OSHA–72 Form is required to be issued by those accredited by OSHA to employers in the maritime industry when the equipment or material handing device is found to be unsafe to use.

The collection of the information needed to complete these forms is necessary to provide an effective and efficient means of enabling employers and employees to determine if cargo gear, equipment, and/or other material handling devices are safe to use.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Gear Certification (29 CFR part 1919). The Agency is requesting to reduce its current burden hour estimate associated with this Standard from 81 hours to 70 hours for a total reduction of 11 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Gear Certification Standard (29 CFR part 1919); OSHA–70 Form.

OMB Number: 1218–0003.

Affected Public: Business or other for-profit;

Number of Respondents: 450.

Total Responses: 450.

Estimated Time per Response: Varies from 5 minutes (.08 hour) for an employer to disclose the OSHA–71 or –72 Form to an OSHA Compliance Officer during an inspection to 45 minutes (.75 hour) for a prospective accredited agency to complete the OSHA–70 Form.

Total Burden Hours: 70.

Estimated Cost (Operation and Maintenance): $1,452,000.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0061). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket

Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on September 11, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–18207 Filed 9–14–07; 8:45 am]

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MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–10]

Notice of Entering Into a Compact With the Government of the Kingdom of Morocco

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Kingdom of Morocco. Representatives of the United States Government and the Government of the Kingdom of Morocco executed the Compact documents on August 31, 2007.

Dated: September 12, 2007.

William G. Anderson, Jr.,

Vice President & General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Government of the Kingdom of Morocco

A. Introduction

Over the past three decades, the Moroccan economy has grown slowly—from 1980 to 2006, per capita incomes only grew 1.5% annually. Despite recent macroeconomic stability, slow growth has left unemployment consistently high and extreme poverty remains around 11%.

In this context, the Government (the ''GoM'') of the Kingdom of Morocco (''Morocco'') launched a national growth strategy, the Plan Emergence, in 2005, which aims to ''modernize and strengthen existing industrial sectors, and target investments in sectors such as textiles, agribusiness, fishing and the crafts industries, where the country has domestic and international competitive advantage.'' As a complement to this strategy and to ensure that the poor benefit from growth in high potential sectors, the GoM has proposed a Millennium Challenge Account investment program (the ''Program''), the funding of which will be memorialized in a Millennium Challenge Compact (the ''Compact''), that seeks to stimulate economic growth by increasing productivity and improving employment in high potential sectors.

B. Program Overview and Budget

1. Goal and Objectives

The goal of Morocco's proposed $697.5 million Compact is to reduce poverty through economic growth. The Program's objective is to stimulate economic growth by increasing productivity and improving employment in high potential sectors. The Program focuses on investments in fruit tree productivity, small-scale fisheries, and artisan crafts in order to modernize and unlock opportunities in these sectors. Small business creation and growth will be supported by investments in financial services and enterprise support. The Program budget is summarized in the table below:

Project USD millions	CIF[1]	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Total
Fruit Tree Productivity	6.96	25.86	84.32	93.86	60.80	29.10	300.90
Small-Scale Fisheries	7.01	35.45	35.80	33.43	2.25	2.23	116.17
Artisan & Fez Medina	6.14	15.88	32.88	24.57	19.07	13.34	111.87
Financial Services	0.50	19.30	14.10	6.70	4.30	1.30	46.20
Enterprise Support	0.00	2.18	1.08	10.29	15.28	5.02	33.85
Monitoring and Evaluation	1.84	3.67	4.04	3.64	3.03	4.52	20.74
Program Admin/Oversight	9.95	13.13	11.79	12.18	10.73	9.98	67.77
Total MCC Contribution	32.40	115.46	184.01	184.67	115.45	65.50	697.50

[1] Compact Implementation Funding (CIF) provided pursuant to Section 609(g) of the Millennium Challenge Act of 2003. CIF will be used prior to entry into force of the Compact for feasibility and design studies, environmental assessments and plans, monitoring and evaluation activities and certain other administrative expenses and start-up costs.

C. Program Description

1. Fruit Tree Productivity Project ($300.90 million)

The objective of the Fruit Tree Productivity Project is to stimulate growth in the agricultural sector and reduce volatility of agricultural production. This project aims to (1) reduce water needs in agriculture by moving from high water-use, low-value cereal grains to low water-use, high-value commercial fruit tree species; (2) reduce volatility in agricultural production and farm revenues by expanding the area of commercial tree species that produce more stable yields and can better handle moisture stress; (3) protect the natural resource base by eliminating wheat production from hillsides, replacing it with trees that reduce erosion and conserve the soil; (4) replace wheat, where Morocco is not competitive on the international market, with commercial tree crops, where it has a natural competitive advantage; and (5) organize and link small-holders to high-value markets.

This project's investments target the length of the value chain, with the majority of the proposed project's activities supporting the growth of the olive oil and table olive sectors. This project will fund the intensification and rehabilitation of approximately 55,000 hectares (ha) of olive, fig and almond trees and the expansion of the same crops on approximately 120,000 ha in rain-fed areas. It will support the intensification and rehabilitation of existing olive tree production in small- and medium-sized irrigated perimeters. In Morocco's oases, this project will support the upgrading of existing small-scale irrigation infrastructure, as well as intensification and rehabilitation of existing date trees. A variety of critical value chain support services have been designed to ensure the success and integration of the various activities, and include training, scientific support, agribusiness organization development, marketing support and gender integration and support for women's projects. MCC funding will help determine this project's potential to qualify for carbon offset credits, recommend actions that stakeholders should take to link into the carbon finance market, and develop guidelines for the selected approach and procedures that must be instituted.

2. Small-Scale Fisheries Project ($116.17 million)

Total annual value-at-landing of Morocco's fish catch is about $832 million, making fishing one of the most important industries in the country. Despite this volume, Morocco is unable to satisfy current domestic demand for quality fish. Demand is expected to increase, driven by an expanding tourist sector and expected growth in domestic fish consumption, which is currently well below Morocco's neighbors. Due to inadequate coastal landing sites and port infrastructure, lack of unbroken cold chain from sea to consumer, weak integrity of the value chain, limited access to open markets, and insufficient training for fishers and their cooperatives, small-scale fisheries remains the most undeveloped segment of Morocco's fishing sector.

The Small-Scale Fisheries Project targets the transformation of the small-scale fisheries sector by modernizing the means of catching, storing, and marketing fish, thereby improving the quality of the catch, maintaining the value chain, and increasing fishers' access to both local and export markets. MCC funding will be used to construct up to 20 fish landing sites (''PDAs'') along both coasts, and to construct or upgrade fishers' facilities in up to 13 major ports; build or rebuild up to 6 modern wholesale markets in selected cities and provide technical assistance and training required to ensure proper management; and to partially fund the acquisition of fresh-fish transportation equipment by mobile fish vendors, together with associated technical assistance and training.

3. Artisan and Fez Medina Project ($111.87 million)

The Artisan and Fez Medina Project seeks to stimulate economic growth by leveraging the links between the craft sector, tourism, and the Fez Medina's rich cultural, historic and architectural resources. Despite potentially rich offerings, tourist spending on artisan products is currently substantially lower than in comparable markets such as Turkey and Tunisia. Artisans lack the training and skills necessary to modernize their production and capitalize on the growing tourist industry and export market. MCC funding will strengthen the national system for literacy and vocational education to benefit artisans and the general population, in particular women and girls. MCC funding will be used to enable artisans to increase the quality of their goods by supporting access to training in modern production techniques and business management, as well as access to bank or microcredit loans to invest in modern kilns and workshops. MCC funding will support the renovation of historic sites within the Fez Medina, including feasibility and market studies, a design competition, and supporting infrastructure, with the goal of creating sites of architectural significance to better serve local residents, attract tourists and increase artisan sales in Fez.

4. Financial Services Project ($46.20 million)

The Financial Services Project seeks to increase financial services for micro-enterprises in Morocco by addressing the key constraints to the development of a broader, deeper, and market-based financial sector. To address the constraints in access to funding for microcredit associations, MCC funding will support an investment in the subordinated debt tranche of Jaida, a non-bank financial institution launched in late 2006 to provide debt to the Moroccan microcredit sector. MCC funding will also be used to analyze the regulatory and operational requirements to allow microcredit associations to change their legal structure (i.e., undergo ''transformation'') in order to offer savings and other non-credit financial services, as well as to mobilize shareholder equity. A detailed action plan will be developed and agreed to by the GoM, MCC and the accountable entity that will be established (''MCA–Morocco''), including the appropriate legal structure for transformation, next steps and timeline for implementing the necessary reforms. MCC funding will support technical assistance to financial institutions to implement the recommendations from this action plan. MCC funding will support investments and technical assistance to improve efficiency and transparency in the financial sector and lower borrowing costs on a sustainable basis for micro-enterprises.

5. Enterprise Support Project ($33.85 million)

The Enterprise Support Project addresses two economic priorities: To reduce high unemployment among young graduates and to encourage a more entrepreneurial culture. According to a recent World Bank report, urban unemployment ranges upwards of 26% for highly educated people, with unemployment rates of 65% among female university graduates under 24 years of age. High unemployment is associated with high job destruction rates, modest formal sector employment generation, and growing labor supply.

The objective of this project is to improve the outcomes of two existing high-priority Government initiatives, Moukawalati (which translates as ''My Small Business''), a relatively new national program initiated to drive

Morocco's businesses to be more competitive in the face of globalization and to address high youth unemployment rates, and the National Initiative for Human Development (''INDH''), a multi-year Government initiative aimed at creating opportunities for the poor, vulnerable, and socially excluded. A pilot approach is being pursued at the initiative of the GoM because of a dearth of quality evidence on the impact of current initiatives on the sustainability of small businesses. This project is structured in two phases. First, a set of three pilots will measure the impact of several training initiatives offered to current beneficiaries of these Government programs who would receive further training and technical assistance designed to increase their rate of survival. Second, if results reported by an independently conducted evaluation are promising, training initiatives will be expanded beginning in Year 3 of the Compact. In addition, the Government agency sponsors of the programs would receive support to help them better manage the selection and training processes for these entrepreneurs.

D. Impacts

The Program is expected to increase Morocco's GDP by approximately $118 million annually and to benefit approximately 600,000 people directly and 3 million people indirectly over the Compact term.

The Fruit Tree Productivity Project is expected to improve the livelihoods of approximately 136,000 farm households in rural areas of the northern, central and southern regions of Morocco. As production and crop values increase, this project will indirectly benefit the network of input suppliers, transporters, processors, and traders along the olive, almond, fig and date value chains. In addition, terrace construction is expected to create benefits for approximately 11,000 agricultural laborers.

The Small-Scale Fisheries Project is expected to benefit approximately 25,000 small-scale fishers, boat owners, wholesale fish merchants, mobile fish vendors and their household members. The construction of boat landing sites complete with basic, commercial and social infrastructure is expected to create the enabling environment for higher fish quality and value, increased income for fishers, and better management of the fish resources. Similar facilities will be built at selected ports where fishers land their catch. The construction and modernization of 6 wholesale markets, mostly in the interior of the country, will strengthen market integration and facilitate an increase in the number of buyers and sellers, and result in increased market-clearing quantities and a more efficient market price. It is anticipated that these improvements to the Moroccan fish market will result in increased domestic consumption of fish, rather than its use as low-value fish meal. Further, it is anticipated that investments to improve standards of hygiene, handling and preservation of fish in the cold chain will contribute to the maintenance of the value of fish and greater sales. Finally, a more efficient and transparent network of wholesale fish markets will contribute to the distribution of a more affordable protein source to the interior of the country where a high level of poverty exists. Approximately 2,000 mobile fish vendors, earning on average $2,250 per year, will benefit from this project. Mobile fish vendors will be able to increase the value and volume of fish sold as well as their marketing range. As a result, it is estimated that mobile fish vendor net incomes (once their loans are repaid) will increase approximately 62%, enabling the vendors to exit subsistence-level poverty.

The Artisan and Fez Medina Project seeks to stimulate economic growth by leveraging the links between the craft sector, tourism, and the Fez Medina's rich cultural, historic and architectural assets. It is expected that 50,000 master artisans will be trained in new design and production methods by the end of the Compact term. Thirty new career tracks will be created and installed in OFPPT schools that will diversify, expand and deepen competencies of students for better employment and incomes. Innovative mobile training programs are expected to reach at least 15,000 people during the Compact term. Approximately 3,250 artisan workers and 550 master artisans are expected to receive production assistance. This project's activities are expected to reduce poverty by stimulating the Medina's main industries, tourism and artisan production, and are estimated to directly benefit approximately 20,000 low-income workers in the Fez Medina.

The key beneficiaries of the Financial Services Project will be individuals or micro-enterprises that borrow from microcredit associations operating in Morocco. The intended impact of this project is to increase the supply of financial services for these clients. Furthermore, to the extent that this project causes investments that lead to service upgrades and helps microcredit associations improve efficiency, clients should benefit from better services, and either some additional increase in lending or reduction in borrowing costs. Today, the microcredit sector serves approximately 1.2 million clients. Assuming this project facilitates a net increase in the client growth rate of a quarter of one percent per year, and assuming that without this project the client growth rate is 30% per year, then there would be 43,000 additional clients by the end of the Compact term. If the net increase in growth is one percent per year, there would be 174,000 additional clients by the end of the Compact term.

During the pilot phases of the Enterprise Support Project, approximately 600 enterprises will receive training. The project will also analyze the regulatory and operational requirements to allow micro-credit associations to change their legal structure in order to offer savings and other non-credit financial services to their customers. MCC assistance will also support investments and technical assistance to improve efficiency and transparency in the financial sector in an effort to lower borrowing costs on a sustainable basis for micro-enterprises.

E. Program Management

1. Governance Structure

The implementation and management arrangements are designed to ensure strong governance, oversight, management, monitoring and evaluation, and fiscal accountability in the use of MCC funds. The Government, through passage of a law, will create an independent agency (an ''*établissement public*'') (''*MCA-Morocco*''), which will be authorized to act on behalf of the Government to manage and oversee the Program's implementation. MCA-Morocco will be composed of: (1) A strategic steering committee to oversee implementation, make strategic decisions, and ensure the execution of agreed policy reforms; (2) a management unit to manage the day-to-day operations. The strategic steering committee will be composed of representatives from the Government, the private sector and civil society. The management unit will be composed of professional staff hired through an open and competitive recruitment, and MCC will have approval rights for all key personnel.

Stakeholder participation will be built into the Program through a series of project-level stakeholders' committees structured to allow the private sector, civil society, and local/regional governments to provide advice and input for implementation.

2. Implementation Arrangements

The GoM and MCC have identified the principal ministries and public institutions that will serve as implementing entities. The current number of personnel in the implementing entities is insufficient to meet the demands of implementation of the Program. Implementation of the Fruit Tree Productivity, Small-Scale Fisheries, and Artisan and Fez Medina Projects will require the services of dedicated implementation teams to be established within the implementing entities for each project, with additional personnel to be contracted by MCA-Morocco dedicated to Compact-funded projects. The teams will be responsible for coordination of the activities of contractors, to achieve project objectives and timelines; development of Compact-related requirements (work plans, detailed financial plans, and quarterly reports), procurement (drafting terms of reference), and performance monitoring of contractors. The teams will be located within the implementing ministries or public institutions to ensure local capacity development and to guarantee close collaboration and communications.

It is expected that MCA-Morocco will engage up to five procurement agents from within the GoM, assisted by an MCC-funded procurement advisor that will provide support, oversight and technical assistance. The procurement advisor will act as procurement agent in areas where such services are required. The Ministry of Finance will serve as the fiscal agent for the Program, assisted by a ''fiscal coordination unit'' within the Ministry of Finance, charged with all financial issues, including regular reporting to MCA-Morocco on global and activity-specific budget concerns, and the maintenance and security of the financial management system. Reporting will be coordinated by the chief financial officer and procurement officer within MCA-Morocco.

Implementation schedules were developed in conjunction with the GoM, covering the start-up of the MCA-Morocco and execution of each project over the entire Compact period. This will facilitate communication and Program oversight by allowing MCA-Morocco and MCC to work off of one common timetable. Approximately five percent of the total Compact amount will be available for disbursements before entry into force to facilitate start-up and ensure successful execution of the Compact within the five-year timeframe.

F. Assessment

1. Economic Analysis

The economic rate of return (''ERR'') for the Program is 17.1%. Project-level ERRs are presented in the table below:

Project	Project ERR %
Fruit Tree Productivity	13
Small-Scale Fisheries	37
Artisan and Fez Medina	21
Financial Services	18
Enterprise Support	14
Program Economic Rate of Return	17.1

2. Consultative Process

The Program is based on development priorities determined in national consultations that began in 2003 and included 56 provincial, 16 regional, one national and one international workshop. The GoM integrated this input with the opportunities identified through the *Plan Emergence*. To determine priorities for MCC financing, an inter-ministerial committee, presided by the Prime Minister, consulted with stakeholders at both the central and local levels. The August 2005 concept paper submitted to MCC was based on these consultations.

At MCC's request during subsequent stages of proposal development, sector-level and national meetings refined the focus of the Program and identified additional proposal components. Sector-level meetings in fishing, agriculture, and the artisan sector followed in six key regions of the country and consultation meetings were held with the country's twelve microcredit associations. The Enterprise Support Project was shaped in the September 2005 conference on employment and the 2006 national conference on training, both of which featured ministerial and local government consultations with key actors.

Morocco continues to develop a culture of consultation and transparency. The significant participatory workshops and public outreach efforts that will be required by MCC during environmental and social impact assessments and detailed project design and implementation will reinforce this culture and contribute to further expansion of dialogue among an array of national and local stakeholders.

G. Donor Coordination

Much of the Program draws on lessons learned from smaller donor-funded projects in the targeted sectors. The Fruit Tree Productivity Project builds on experiences of the United States Agency for International Development in supporting conversion to higher value crop production as well as the European Union (''EU'') and the World Bank in supporting small-scale irrigation. Similarly, the Japanese and Italian governments have supported GoM efforts to increase returns to the small-scale fisheries sector by supporting PDAs. In addition, the Enterprise Support Project was based in part on lessons learned from EU and GTZ projects aimed at supporting the small business sector in Morocco.

MCC's funding will complement on-going efforts by Morocco's other development partners across several projects. The Artisan and Fez Medina Project will support efforts by UNESCO and the World Bank to preserve and stimulate economic activity in the Medina and leverage the funding provided by FODEP, an environmental fund financed with German assistance. The Financial Services Project seeks to support an investment in Jaida alongside KfW, AFD and the IFC.

Continued coordination will be a priority throughout implementation.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of the Kingdom of Morocco

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Millennium Challenge Compact

Preamble

This Millennium Challenge Compact (this ''Compact'') is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (''MCC''), and the Government (the ''Government'') of the Kingdom of Morocco (''Morocco'') (individually a ''Party'' and collectively, the ''Parties'').

Recalling that the Government submitted to MCC a proposal based on development priorities determined in national and regional consultations and integrated with the national growth strategy (including, inter alia, the Plan Emergence), which seeks to stimulate economic growth by increasing productivity and improving employment in high potential sectors; and

Recognizing that MCC wishes to help Morocco implement a program to achieve the goal and objectives described herein (the ''Program'');

The Parties hereby agree as follows:

Article 1. Goal and Objectives

Section 1.1 Compact Goal

The goal of this Compact is to reduce poverty in Morocco through economic growth (the ''Compact Goal'').

Section 1.2 Program Objective

The objective of the Program is to stimulate economic growth by increasing productivity and improving employment in high potential sectors (the ''Program Objective'').

Section 1.3 Project Objectives

The objectives of the Projects (each, a ''Project Objective'' and collectively, the ''Project Objectives'') are:

(a) To stimulate growth in the agricultural sector and reduce volatility of agricultural production by accelerating the transformation from annual crops, notably cereals, to more productive perennial tree crops, such as olives, almonds, figs and dates;

(b) to transform the small-scale fishing sector by modernizing the means of catching, storing, and marketing fish to improve the quality of the catch, maintain the value chain and increase access to local and export markets, and to assure the sustainable use of fish resources;

(c) to increase value to the tourism and artisan sectors through leveraging the links between the craft sector and tourism; to expand the quality of and improve access to artisan, literacy and vocational training; and to increase the value of the cultural, historic and architectural resources of the Fez Medina;

(d) to increase financial services for micro-enterprises in Morocco by addressing the key constraints to the development of a broader, deeper, market-based financial sector; and

(e) to improve the outcomes of existing high priority government initiatives, Moukalawati and the National Initiative for Human Development (Initiative National pour le Développement Humain, or ''INDH'') increasing the sustainability of young businesses created with their assistance.

The Government will take all the steps necessary or appropriate to achieve the Program Objective and Project Objectives during the Compact Term (as defined in Section 7.4).

Article 2. Funding and Resources

Section 2.1 MCC Funding

MCC grants to the Government, under the terms of this Compact, an amount not to exceed Six Hundred Ninety-Seven Million, Five Hundred Thousand United States Dollars (US$697,500,000) (''MCC Funding'') to help the Government implement the Program as more specifically set forth in Annex II of this Compact.

Section 2.2 Compact Implementation Funding

(a) Of the total amount of MCC Funding, MCC will make available to the Government up to Thirty-Two Million, Four Hundred Thousand United States Dollars (US$32,400,000) (''Compact Implementation Funding'') under Section 609(g) of the Millennium Challenge Act of 2003 for:

(i) feasibility and design studies, strategic environmental (and social) assessments, environmental impact assessments, environmental assessments, environmental management plans and resettlement action plans for projects and activities included in the Program;

(ii) financial management and procurement activities;

(iii) monitoring and evaluation activities;

(iv) administration activities, including salaries and administrative support expenses such as rent, information technology, and other capital expenditures; and

(v) other Program implementation activities approved by MCC.

(b) Compact Implementation Funding is subject to (i) the limitations on the use or treatment of MCC Funding set forth in Sections 2.6 and 2.7 and (ii) any other requirements and limitations as may be notified to the Government by MCC in writing.

Section 2.3 Disbursement

In accordance with this Compact and the Program Implementation Agreement (as defined in Section 3.1), MCC will disburse MCC Funding for expenditures incurred pursuant to the Program (each, a ''Disbursement''). The Disbursements will be made available to the Government, at MCC's sole election, by (a) deposit to one or more bank accounts established by the Government and acceptable to MCC (each, a ''Permitted Account'') or (b) direct payment to a provider of goods, works or services required to implement the Program.

Section 2.4 Interest

The Government will pay to MCC interest and other earnings that accrue on MCC Funding on deposits in the Permitted Accounts in accordance with the Program Implementation Agreement (including by directing such payments to a bank account that MCC may from time to time indicate).

Section 2.5 Government Resources; Budget

(a) The Government will provide all funds and other resources, and will take all actions, that are necessary to carry out the Government's responsibilities and obligations under this Compact.

(b) The Government will use its best efforts to ensure that all MCC Funding it receives or is projected to receive in each fiscal year is fully accounted for in its annual budget on a multi-year basis.

(c) The Government will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the activities contemplated under this Compact and the Program or for activities comparable to those contemplated under this Compact or the Program.

(d) Unless the Government discloses otherwise to MCC in writing, MCC Funding will be in addition to the

resources that the Government would otherwise receive or budget for the activities contemplated under this Compact and the Program or for activities comparable to those contemplated under this Compact or the Program.

Section 2.6 Limitations on the Use of MCC Funding

The Government will ensure that MCC Funding will not be used for any purpose that would violate United States law or policy, as specified in this Compact or as further notified by MCC to the Government in writing or posted on the MCC Web site at www.mcc.gov (''MCC Web site''), including but not limited to the following purposes:

(a) for assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) for any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard as further described in environmental guidelines delivered by MCC to the Government or posted on the MCC Web site (the ''MCC Environmental Guidelines''); or

(d) to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.7 Taxes

(a) Unless the Parties otherwise specifically agree in writing, the Government will ensure that each of the following is free from the payment of any existing or future taxes, duties, levies, contributions or other similar charges (''Taxes'') of or in Morocco (including any such Taxes of a national, regional, local or other governmental or taxing authority): (i) The Program; (ii) MCC Funding; (iii) interest or earnings on MCC Funding; (iv) any Project or activity implemented under the Program; (v) goods, works, services, technology and other assets and activities under the Program or any Project; (vi) persons and entities that provide such goods, works, services, technology and assets or perform such activities; and (vii) income, profits and payments with respect thereto. The Parties acknowledge and agree that the foregoing includes, inter alia, value added and other transfer taxes, profit and income taxes, property and ad valorem taxes, and import and export duties and taxes (including for goods imported and re-exported for personal use), withholding taxes and payroll taxes.

(b) Before any Disbursement, the Government and MCC may, at MCC's discretion, enter into one or more agreements setting forth the mechanisms for implementing this Section 2.7, including (i) waivers of certain filing and compliance requirements relating to Taxes, and (ii) an agreement on exceptions to paragraph (a) above for (1) Taxes on and contributions for certain individuals who are nationals or permanent residents of Morocco, (2) Taxes (other than transfer Taxes and import and export Taxes) on certain entities that are organized under the laws of Morocco, and (3) fees or charges for services that are generally applicable in Morocco, reasonable in amount and imposed on a non-discriminatory basis.

(c) If a Tax has been levied and paid contrary to the requirements of this Section 2.7 or any agreement entered into pursuant to this Section 2.7, whether inadvertently, due to the impracticality of implementation of this Section 2.7 with respect to certain types or amounts of taxes, or otherwise, the Government will refund promptly to MCC the amount of such Tax in United States Dollars (''US$'') or Moroccan Dirham (''MAD'') within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing of such levy and tax payment, whether by MCC or otherwise; *provided, however,* that no MCC Funding, proceeds thereof or Program assets may be applied by the Government in satisfaction of its obligations under this paragraph.

Article 3. Implementation

Section 3.1 Program Implementation Agreement

The Government will implement the Program in accordance with this Compact and as further specified in an agreement to be entered into by MCC and the Government relating to, among other matters, implementation arrangements, fiscal accountability, disbursement and use of MCC Funding, procurement and applicable tax exemptions (the ''Program Implementation Agreement'' or ''PIA'').

Section 3.2 Government Responsibilities

(a) The Government has the principal responsibility to oversee and manage the implementation of the Program.

(b) With the prior written consent of MCC, the Government may designate an entity to implement some or all of the Government's obligations or to exercise any rights of the Government under this Compact or the PIA. Such a designation will not relieve the Government of any designated obligations and rights, for which the Government will retain full responsibility.

(c) The Government will ensure that no law or regulation in Morocco now or hereinafter in effect makes or will make unlawful or otherwise prevent or hinder the performance of any obligation under this Compact, the PIA or any other related agreement or any transaction contemplated hereby or thereby.

(d) The Government will ensure that any assets or services funded in whole or in part (directly or indirectly) by MCC Funding will be used solely to implement the Program unless otherwise agreed by MCC in writing.

Section 3.3 Policy Performance

In addition to undertaking the specific policy and legal reform commitments identified in Annex I of this Compact, the Government will seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the Millennium Challenge Act of 2003 and the selection criteria and methodology used by MCC.

Section 3.4 Government Assurances

The Government assures MCC that:

(a) As of the date this Compact is signed by the Government, the information provided to MCC by or on behalf of the Government in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects;

(b) this Compact does not, and will not, conflict with any other international agreement or obligation of the Government or any legislation of Morocco; and

(c) the Government will not invoke any of the provisions of its internal law to justify or excuse a failure to perform its duties or responsibilities under this Compact.

Section 3.5 Implementation Letters

As necessary, MCC may provide guidance consistent with the terms and conditions of this Compact to the Government in writing on any matter relating to this Compact, MCC Funding or the implementation of the Program (each, an ''Implementation Letter''). The

Government will apply such guidance in implementing the Program.

Section 3.6 Procurement

The Government will ensure that the procurement of all goods, works and services by the Government or any Provider (as defined in Section 3.7(c)) to implement the Program will be consistent with the procurement guidelines notified by MCC to the Government in writing or by posting on the MCC Web site, or otherwise made publicly available (the ''MCC Program Procurement Guidelines''), which will include, among others, the following requirements:

(a) Open, fair, and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works and services;

(b) solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(c) contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(d) no more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, will be paid to procure goods, works and services.

Section 3.7 Records; Accounting; Covered Providers; Access

(a) Government Books and Records. The Government will maintain, and will use its best efforts to ensure that all Covered Providers (as defined in subsection (c) below) maintain, accounting books, records, documents and other evidence relating to the Program adequate to show to MCC's satisfaction the use of all MCC Funding (''Compact Records''). In addition, the Government will furnish or cause to be furnished to MCC upon its request all such Compact Records.

(b) Accounting. The Government will maintain, and will use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with MCC's prior written approval, other accounting principles, such as those (i) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (ii) then prevailing in Morocco. Compact Records must be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Providers and Covered Providers. Unless the Parties agree otherwise in writing, a ''Provider'' is (i) any entity of the Government that receives or uses MCC Funding or any other Program asset in carrying out activities to implement the Program or (ii) any third party that receives at least US$50,000 in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of the Government) during the Compact Term. A ''Covered Provider'' is (i) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$300,000 or more of MCC Funding in any Government fiscal year or any other non-United States person or entity that receives, directly or indirectly, US$300,000 or more of MCC Funding from any Provider in such fiscal year, or (ii) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$500,000 or more of MCC Funding in any Government fiscal year or any other United States person or entity that receives, directly or indirectly, US$500,000 or more of MCC Funding from any Provider in such fiscal year.

(d) Access. Upon MCC's request, the Government, at all reasonable times, will permit, or cause to be permitted, authorized representatives of MCC, an authorized United States inspector general, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted pursuant to this Compact, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect facilities and activities funded in whole or in part by MCC Funding.

Section 3.8 Audits; Reviews

(a) Government Audits. Except as the Parties may otherwise agree in writing, the Government will, on at least a semi-annual basis, conduct, or cause to be conducted, financial audits of all disbursements of MCC Funding through the end of the Compact Term, in accordance with the terms of the Program Implementation Agreement. As requested by MCC in writing, the Government will use, or cause to be used, to conduct such audits an auditor approved by MCC and named on the list of local auditors approved by the Inspector General of MCC (the ''Inspector General'') or a United States-based certified public accounting firm selected in accordance with the ''Guidelines for Financial Audits Contracted by MCA'' (the ''Audit Guidelines'') issued and revised from time to time by the Inspector General, which are posted on the MCC Web site. Audits will be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. An audit must be completed and the audit report delivered to MCC no later than 90 days after the first period to be audited and no later than 90 days after each June 30 and December 31 thereafter, or such other period as the Parties may otherwise agree in writing.

(b) Audits of United States Entities. The Government will ensure that agreements between the Government or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, that are financed with MCC Funding state that the United States nonprofit organization is subject to the applicable audit requirements contained in the United States Office of Management and Budget (''OMB'') Circular A–133. The Government will ensure that agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, that are financed with MCC Funding state that the United States for-profit organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(c) Corrective Actions. The Government will use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of the Government's records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC will have the right to arrange for audits of the Government's use of MCC Funding.

(e) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact.

Article 4. Communications

Section 4.1 Communications

Any document or communication required or submitted by either Party to the other under this Compact must be in writing and, except as otherwise agreed

by the Parties, in English. For this purpose, the address of each Party is set forth below.

To MCC:

Millennium Challenge Corporation, Attention: Vice President for Operations (with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: +1(202) 521–3700, Telephone: +1(202) 521–3600, E-mail: *VPOperations@mcc.gov* (Vice President for Operations), *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel).

To the Government:

Government of the Kingdom of Morocco, Attention: Prime Minister (with a copy to the Minister of Finance), Primature, Palais Royal, Touarga, Rabat, Royaume du Maroc, Facsimile: +(212) 037 768 656, Telephone : +(212) 037 219 400, *E-mail: pm@pm.gov.ma.*

With a copy to:

Ministry of Finance & Privatization, Attn: Minister of Finance, Bd. Med V. Quartier AdministratifRabat—Chellah, Royaume du Maroc, Facsimile: +(212) 037.76.40.81, Telephone: +(212) 037.76.06.61/037.76.55.04, E-mail: *ministre@finances.gov.ma.*

Section 4.2 Representatives

For all purposes of this Compact, the Government will be represented by the individual holding the position of, or acting as, the Minister of Finance of the Government, and MCC will be represented by the individual holding the position of, or acting as, Vice President for Operations of MCC (each, a ''Principal Representative''), each of whom, by written notice to the other Party, may designate one or more additional representatives for all purposes other than signing amendments to this Compact. A Party may change its Principal Representative to a new representative that holds a position of equal or higher rank upon written notice to the other Party.

Section 4.3 Signatures

With respect to all documents other than this Compact or an amendment to this Compact, a signature delivered by facsimile or electronic mail will be binding on the Party delivering such signature to the same extent as an original signature would be.

Article 5. Termination; Suspension; Refunds

Section 5.1 Termination; Suspension

(a) Either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) MCC may, immediately upon written notice to the Government, suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC as a basis for suspension or termination (whether in writing to the Government or by posting on the MCC Web site) has occurred, which circumstances include but are not limited to the following:

(i) The Government fails to comply with its obligations under this Compact, the PIA or any other agreement or arrangement entered into by the Government in connection with this Compact or the Program;

(ii) an event or series of events has occurred that MCC determines makes it improbable that the Program Objective or any of the Project Objectives will be achieved during the Compact Term or that the Government will be able to perform its obligations under this Compact;

(iii) a use of MCC Funding or continued implementation of the Program violates or would violate applicable law or United States Government policy, whether now or hereafter in effect;

(iv) the Government or any other person or entity receiving MCC Funding or using assets financed in whole or in part with MCC Funding is engaged in activities that are contrary to the national security interests of the United States;

(v) an act has been committed or an omission or an event has occurred that would render Morocco ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(vi) the Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Morocco for assistance under the Millennium Challenge Act of 2003; and

(vii) the Government or another person or entity receiving MCC Funding or using assets financed in whole or in part with MCC Funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements will cease upon expiration, suspension, or termination of this Compact; *provided, however,* MCC Funding may be used, in compliance with this Compact and the PIA, to pay for (i) reasonable expenditures for goods, works or services that are properly incurred under or in furtherance of the Program before expiration, suspension or termination of this Compact, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within 120 days after the expiration, suspension or termination of this Compact, as long as the request for such expenditures is submitted within ninety (90) days after such expiration, suspension or termination.

(d) Subject to subsection (c) of this Section 5.1, upon the expiration, suspension or termination of this Compact, (i) any amounts of MCC Funding not disbursed by MCC will be released from any obligation in connection with this Compact, and (ii) any amounts of MCC Funding disbursed by MCC but not committed under Section 2.3 before the expiration, suspension or termination of this Compact, plus accrued interest thereon, will be returned to MCC within thirty (30) days after the Government receives MCC's request for such return.

(e) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that the Government or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

Section 5.2 Refunds; Violation

(a) If any MCC Funding, any interest or earnings thereon, or any asset financed in whole or in part with MCC Funding is used for any purpose in violation of the terms of this Compact, then MCC may require the Government to repay to MCC in United States Dollars the value of the misused MCC Funding, interest, earnings, or asset, plus interest within thirty (30) days after the Government's receipt of MCC's request for repayment. The Government will not use MCC Funding, proceeds thereon or Program assets to make such payment.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 5.2 for a refund will continue during the Compact Term and for a period of (i) five years thereafter or (ii) one year after MCC receives actual knowledge of such violation, whichever is later.

Section 5.3 Survival

The Government's responsibilities under Sections 2.4, 2.6, 2.7, 3.7, 3.8, 4.1, 5.1(c), 5.1(d), 5.2, 5.3 and 6.4 of this Compact will survive the expiration, suspension or termination of this Compact.

Article 6. Compact Annexes; Amendments; Governing Law

Section 6.1 Annexes

Each annex to this Compact constitutes an integral part of this Compact.

Section 6.2 Inconsistencies

In the event of any conflict or inconsistency between:

(a) Any annex to this Compact and any of Articles 1 through 7, such Articles 1 through 7 will prevail; or

(b) this Compact and any other agreement between the Parties regarding the Program, this Compact will prevail.

Section 6.3 Amendments

The Parties may amend this Compact only by a written agreement signed by the Principal Representatives and subject to the completion of the respective domestic requirements of the Parties.

Section 6.4 Governing Law

This Compact is an international agreement and is governed by the principles of international law.

Section 6.5 Additional Instruments

Any reference to activities, obligations or rights undertaken or existing under or in furtherance of this Compact or similar language will include activities, obligations and rights undertaken by, existing under or in furtherance of any agreement, document or instrument related to this Compact and the Program.

Section 6.6 References to MCC Web site

Any reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a document or information available on, or notified by posting on the MCC Web site will be deemed a reference to such document or information as updated or substituted on the MCC Web site from time to time.

Section 6.7 References to Laws, Regulations, Policies and Guidelines

Each reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a law, regulation, policy, guideline or similar document will, unless expressly set forth herein or therein, be construed as a reference to such law, regulation, policy, guidelines or similar document as it may, from time to time, be amended, revised, replaced, or extended and will include any law, regulation, policy, guidelines or similar document issued under or otherwise applicable or related to such law, regulation, policy, guidelines or similar document.

Article 7. Entry Into Force

Section 7.1 Domestic Requirements

Before this Compact enters into force, the Government will take all steps necessary to ensure that once in force (a) this Compact and the PIA and all of the provisions of this Compact and the PIA are valid and binding and are in full force and effect in Morocco, (b) this Compact and the PIA will be international agreements and (c) no internal law of Morocco may be invoked as justification for the Government's failure to perform any of its obligations under this Compact.

Section 7.2 Conditions Precedent to Entry into Force

Before this Compact enters into force:

(a) The Government and MCC will have executed the PIA, and it must be effective; and

(b) the Government will have delivered to MCC:

(i) a certificate signed and dated by the Principal Representative of the Government, or such other duly authorized representative of the Government acceptable to MCC, that the Government has satisfied the requirements of Section 7.1;

(ii) a legal opinion from the Secretariat General du Gouvernement of Morocco (or other entity acceptable to MCC), in form and substance satisfactory to MCC; and

(iii) complete, certified copies of all decrees, legislation, regulations or other governmental documents relating to the Government's domestic requirements for this Compact to enter into force and the satisfaction of Section 7.1, which MCC may post on its Web site or otherwise make publicly available.

Section 7.3 Date of Entry into Force

This Compact will enter into force on the later of (a) the date of the last letter in an exchange of letters between the Principal Representatives confirming that each Party has completed its domestic requirements for entry into force of this Compact, and (b) the date that all conditions set forth in Section 7.2 have been satisfied.

Section 7.4 Compact Term

This Compact will remain in force for five years after its entry into force, unless terminated earlier under Section 5.1 (the ''Compact Term'').

Section 7.5 Provisional Application

Upon signature of this Compact, the Parties will provisionally apply this Compact until it has entered into force in accordance with Section 7.3; provided that no MCC Funding, other than Compact Implementation Funding, will be made available or disbursed to the Government before this Compact enters into force.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact this 31st day of August, 2007.

Done at Tetouan, Morocco

For Millennium Challenge Corporation, on behalf of the United States of America, Name: John J. Danilovich, *Title:* Chief Executive Officer.

For the Government of the Kingdom of Morocco, Name: Fathallah Oualalou, Title: Minister of Finance.

Annex I Program Description

A. Overview

This Annex I to this Compact describes the Program that MCC Funding will support in Morocco during the Compact Term.

1. Background and Consultative Process

Over the past three decades the Moroccan economy has grown slowly: From 1980 to 2006, per capita incomes grew 1.5 percent annually. While the macroeconomic environment in Morocco has improved in recent years, unemployment remains consistently high and extreme poverty remains near 11 percent.

The Program is based on development priorities determined in national consultations that began in 2003 and included 56 provincial, 16 regional, one national and one international workshop. The Government integrated this input with the opportunities identified through the Plan Emergence—a national growth strategy launched in 2005 to ''modernize and strengthen existing industrial sectors, and target investments in sectors such as textiles, agribusiness, fishing and the crafts industries, where the country has domestic and international competitive advantages.'' Priorities were determined through an inter-ministerial committee presided by the Prime Minister in consultation with stakeholders at both the national and local levels. Based on this consultative process, the Government submitted its initial proposal to MCC in August 2005.

At MCC's request, sector level and national consultations refined the focus of the Program and identified additional components. Sector level consultations in fishing, agriculture, and the artisan sector followed in six key regions of the country. The Government also consulted with the country's microcredit associations, followed by conferences on employment and

training, both of which featured ministerial and local government consultations with key actors.

2. Program Description

The Program Objective is to stimulate economic growth by increasing productivity and improving employment in high potential sectors. The Program includes the Fruit Tree Productivity Project, the Small-Scale Fisheries Project, the Artisan and Fez Medina Project, the Financial Services Project and the Enterprise Support Project (each, a ''Project'') and the activities related to the Projects (each, a ''Project Activity'') as described in this Annex I.

The Program is expected to increase Morocco's GDP by approximately US$118,000,000 annually and to benefit approximately 600,000 people directly and three million people indirectly over the Compact Term.

The Parties may agree to modify or eliminate any Project or Project Activity or to create a new Project or Project Activity by written agreement signed by the Principal Representative of each Party without amending this Compact; provided, however, any such modification or elimination of a Project or Project Activity or creation of a new Project or Project Activity does not (a) cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1 of this Compact, (b) cause the Government's responsibilities or contribution of resources to be less than specified in this Compact, or (c) extend the Compact Term.

3. Environmental and Social Accountability

All of the Projects will be implemented in compliance with the MCC Environmental Guidelines, MCC's guidance on the integration of gender in Program implementation delivered by MCC to the Government or posted on the MCC Web site (the ''MCC Gender Policy'') and the World Bank's Operational Policy on Involuntary Resettlement in effect as of July 2007 (''OP 4.12''). The Government will also ensure that the Projects comply with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with this Compact. The Government will: (a) Undertake and complete any strategic environmental (and social) assessments (''SEA''), environmental impact assessments (''EIA''), environmental assessments (''EA''), environmental management plans (''EMP'') and resettlement action plans (''RAP''), in form and substance satisfactory to MCC, and as required under the laws of Morocco, the MCC Environmental Guidelines, this Compact, the Program Implementation Agreement or other supplement agreement or as otherwise required by MCC; (b) implement to MCC's satisfaction environmental and social mitigation measures identified in such assessments or plans; and (c) commit to fund environmental mitigation, (including costs of resettlement) in excess of MCC Funding not specifically provided for in the budget for any Project.

B. Fruit Tree Productivity Project

1. Background

The Fruit Tree Productivity Project is designed to stimulate growth in the agricultural sector through transformation from extensive cropping of annuals, notably cereals, to more productive market-oriented cultivation of perennial tree crops (olives, almonds, figs, dates), based on sustainable management of soil and water resources and improved links to national and international markets.

2. Summary of Project and Activities

The Fruit Tree Productivity Project consists of the following Project Activities:

(a) Rain-fed Olive, Almond and Fig Tree Intensification and Expansion.

This Project Activity is focused on the intensification and rehabilitation of approximately 55,000 hectares (ha) of rain-fed fruit trees and the expansion of fruit tree production on approximately 120,000 ha. The objective is to increase and stabilize farm incomes in target areas by facilitating the shift to tree crops. Specifically, MCC Funding will support:

(i) Intensification and rehabilitation of existing olive, almond and fig orchards;

(ii) expansion of tree crops by converting hillsides planted with annual cereal crops to new high value, terraced, perennial olive, almond and fig orchards;

(iii) training and technical assistance for producers, their families and producer associations, focused on improved crop husbandry techniques; and

(iv) capacity development for farmer cooperatives in management, marketing, accounting, organization and access to financial services.

(b) Olive Tree Irrigation and Intensification.

This Project Activity supports the intensification and rehabilitation of existing olive tree production in small and medium-sized irrigated perimeters (petites et moyennes hydrauliques or, ''PMH''). The objective is to increase the efficiency of water use and other crop practices to enhance the yield and profitability of olive production in the target areas (approximately 25,600 ha within perimeters covering 47,000 ha). Specifically, MCC Funding will support:

(i) Irrigation infrastructure improvements of up to 65 PMH schemes, including: concrete lining of existing earthen canals; construction of diversion weirs, storage basins and pumping stations; works on springs; and repair of subsurface drainage canals;

(ii) technical and training assistance on improved crop husbandry techniques for producers, their families and producer associations;

(iii) assistance for existing agricultural water users associations (Associations des Usagers des Eaux Agricoles, or ''AUEA'') in operations, management and maintenance of irrigation water distribution systems; and

(iv) the creation, training and advisory support of farmer cooperatives and training in management, marketing, accounting, organization and access to financial services.

(c) Date Tree Irrigation and Intensification.

This Project Activity will support the upgrading of existing small-scale irrigation infrastructure and the intensification and rehabilitation of existing date tree cultivation in irrigated oasis perimeters (approximately 16,000 ha within perimeters covering 23,000 ha). The objective is to increase the efficiency of water use and other crop practices to enhance the yield and profitability of date production in the target areas. Specifically, MCC Funding will support:

(i) Irrigation infrastructure improvements of up to 12 irrigation schemes, including: concrete lining of existing earthen canals; construction of diversion weirs, storage basins and pumping stations; works on springs; and repair of subsurface drainage canals;

(ii) studies and remedial works agreed to by the Parties to control seepage from the saddle dam portion of the Hassan Addakhil Dam on the Ziz River;

(iii) rehabilitation of date trees, including the pruning, cleaning, and fertilizing of approximately 222,500 existing trees;

(iv) provision and transplanting of date plants, including approximately 282,500 disease-free in-vitro date plants and 60,000 selected offshoots from existing trees;

(v) technical and training assistance for producers, their families, and producer associations on improved crop husbandry techniques and the creation, training and advisory support of farmer

cooperatives in management, marketing, accounting, organization and access to financial services;

(vi) assistance for existing AUEAs in operations, management and maintenance of irrigation water distribution systems; and

(vii) advisory support and development of business plans for date grading, packing and cold storage facilities at secondary cooperatives.

(d) Fruit Tree Sector Services.

This Project Activity will support a variety of critical value chain support services to ensure the success and integration of the Project. Specifically, MCC Funding will support:

(i) A training needs assessment to develop a comprehensive training plan that will provide the basis for specific training activities;

(ii) the establishment, and initial operations of, a national scientific coordinating and advisory committee to guide, oversee and evaluate the applied research and scientific support associated with the Project;

(iii) agribusiness development to provide a market information system for olives and dates, a quality certification program for dates and olives, assistance to secondary date and olive processing-packing-marketing cooperatives, and support for professional associations;

(iv) market research and market planning for producer cooperatives and other beneficiary groups;

(v) a gender assessment and support for two to four pilot projects to integrate women into small business enterprises in the fruit tree sector; and

(vi) an assessment to determine whether and how Project beneficiaries can qualify for and benefit from carbon offset credits through tree planting activities.

3. Beneficiaries

The Fruit Tree Productivity Project is expected to improve the livelihoods of approximately 136,000 farm households in rural areas of the northern, central and southern regions of Morocco. Direct beneficiaries of the Rain-fed Olive, Almond and Fig Tree Intensification and Expansion Project Activity are estimated to be approximately 83,000 farm households. It is estimated that 20,000 farmers currently growing olive trees will rehabilitate and intensify approximately 27,500 ha of their orchards as a result of the Project and thus increase crop yields and quality. The Project will assist a second group of 16,350 farmers, who have no trees, to terrace approximately 43,000 ha of land and plant trees on hillsides currently dominated by cereal crops. Finally, Project Activities will involve both rehabilitation and expansion of tree crops by approximately 46,500 farmers growing some trees on approximately 104,500 ha. Productivity increases resulting from the Project are expected to lead, on average, to an increase in agricultural net revenue of 64 percent for farmers that are dependent on rain-fed agriculture compared with farmers who do not benefit from the Project.

For the Olive Tree Irrigation and Intensification Project Activity, as a result of increased supply of water and low water use crops, crop water deficits will be reduced and productivity will increase, leading to an average incremental increase in agricultural net revenue of 62 percent for approximately 33,000 direct beneficiaries.

For the Date Tree Irrigation and Intensification Project Activity, the rehabilitation of existing date palms and the provision of disease-free in-vitro plants and selected offshoots, coupled with reduced water stress through increased agricultural irrigation, are expected to result in an incremental increase in agricultural net revenue of 52 percent for 20,000 farmers.

As production and crop values increase, the Project will indirectly benefit the network of input suppliers, transporters, processors, and traders along the olive, almond, fig and date value chains. In addition, terrace construction is expected to create benefits for approximately 11,000 agricultural laborers.

4. Sustainability

Institutional Sustainability

The sustainability of the outcomes achieved by the Fruit Tree Productivity Project will depend upon the Ministry of Agriculture (''MOA''), the extension system, farmer cooperatives, AUEAs in the irrigated areas, and the beneficiaries. Along with research and training institutions, and a number of private firms, the MOA will be responsible for ensuring that the necessary farm advisory services to support beneficiaries after the Compact Term are in place. The Project will provide training to the MOA's central and provincial staff in new modes of operation and management. Technical assistance should be sufficient to enable farmer associations and other cooperatives to operate independently. The Government will ensure that AUEAs supported by the Project will commit to assuming responsibility for operation and maintenance of irrigation infrastructure financed by MCC. Technical support to AUEAs will strengthen their capacity to sustain maintenance after the Compact Term.

Financial Sustainability

Shifting producers out of low yield cereal crops in which Morocco has no comparative advantage, into tree crops for which both growing conditions and market conditions are favorable, is an important element in the financial sustainability of the Fruit Tree Productivity Project. The sustainable use of soil and water also affects financial sustainability. The Project includes training and technical support to enhance husbandry practices, and collective marketing to maximize the financial opportunity afforded by this shift in cropping system.

Environmental and Social Sustainability

The environmental and social sustainability of the Project is promoted by (a) improving the efficiency of irrigation water management, without increasing the volume of water harvested, (b) establishing ongoing monitoring of water and soil resources, (c) improving soil conservation through terracing and planting of perennial tree crops, in place of annual cereal crops, and (d) supporting integrated pest management, environmental impact assessment of olive oil processing, and the latest science-based farming technologies. Environmental and social analyses will include assessment of potential downstream effects of irrigation developments.

5. Environmental and Social Impacts

The Fruit Tree Productivity Project is classified as Category A and will be subject to SEAs, a consultative process and any required follow-on assessments.

The Government will conduct two SEAs, in form and substance acceptable to MCC, covering: rain-fed fruit tree intensification and expansion; and olive tree irrigation and intensification in PMH perimeters and date tree irrigation and intensification in oasis perimeters (including measures to address safety issues associated with the Hassan Addakhil Dam). Both SEAs will address issues relevant to the Fruit Tree Sector Services Project Activity and will include pest management plans (''PMP'') and HIV/AIDS awareness plans. The need for RAPs will be based on the recommendation of the SEAs. Based on the results of the SEAs, follow-on individual assessments (full EIA, limited assessment or site-specific EMP), as needed, will be prepared, acceptable to MCC, for each rain-fed perimeter, PMH perimeter, oasis perimeter or the Hassan Addakhil Dam improvements. The SEA will accelerate assessment of nursery production and terracing works for up to 30 selected

pilot rain-fed perimeters, to produce early draft EMPs for use in terms of reference for contracts to implement the works for these 30 perimeters. No planting or construction work will begin until after completion and acceptance of the SEA by MCC and the Government. MCC Funding will also support an environmental unit at the MOA to address impact assessment, monitoring and follow-up on EIAs, EAs, EMPs and RAPs.

6. Donor Coordination

In developing the Fruit Tree Productivity Project, MCC held numerous meetings with donors funding similar and complementary projects, including the World Bank, the European Union, the French development agency (Agence Française de Développement, or ''AFD''), the German development agency (Kreditanstalt für Wiederaufbau, or ''KfW'') and the United States Agency for International Development (''USAID'').

7. USAID

USAID currently funds a project to facilitate the switch to higher value crops, including linking olive oil producers to export opportunities. The Fruit Tree Productivity Project will scale up several of the USAID interventions, while building on lessons learned from previous projects.

8. Government Contribution

The Government will contribute US$2,880,000 to the Fruit Tree Sector Services Project Activity, as more specifically set forth in the Program Implementation Agreement. Provincial agricultural administrations (Directions Provinciales de l'Agriculture) will be responsible for the operation and maintenance of the main works on the PMH and oasis irrigation systems, essentially the diversion weirs and large canals. The Government will also fund the cost of the remedial measures agreed to by the Government and MCC for the saddle dam portion of the Hassan Addakhil Dam on the Ziz River above the US$5,000,000 to be financed by MCC Funding.

The Government will ensure that adequate financial resources are available to assist farmers participating in the Rain-fed Olive, Almond and Fig Tree Intensification and Expansion Project Activity.

9. Policy, Legal and Regulatory Reforms

In view of the chronic scarcity of water resources in Morocco, the Government will continue institutional reforms and initiatives aimed at sustainable water resource use and will ensure compliance with existing laws, including the following:

(a) Water Law 10–95, which introduced the principle of river basin integrated water development; and

(b) Law (Dahir 1–69–25) on agricultural investments.

The Government will also continue to support the water saving program, mainly in the irrigation sector in the Souss-Massa and Oum Er Rbia river basins, and the waste water treatment program in collaboration with the Ministry of Interior.

C. Small-Scale Fisheries Project

1. Background

The Small-Scale Fisheries Project targets the transformation of the small-scale fisheries sector by modernizing the means of catching, landing, storing, and marketing fish, thereby improving the quality of the catch, maintaining the value chain, and increasing fishers' access to both local and export markets.

2. Summary of Project and Activities

The Small-Scale Fisheries Project consists of the following Project Activities:

(a) Fish Landing Sites and Port Facilities

This Project Activity will construct fish landing sites (points de débarquement aménagés, or ''PDAs'') along both coasts of Morocco, and construct or upgrade port facilities in 13 major ports, in each case for the benefit of small-scale fishers. Specifically, MCC Funding will support:

(i) construction of up to 20 PDAs, including site development, auction hall, ice plant, fuel depot, and other essential buildings, as well as slipways, access roads, and utilities;

(ii) construction of improved port facilities at up to 13 urban ports, including small equipment storerooms and mechanics' workshops as well as provision of related boat-unloading infrastructure (floating docks, slipways and unloading winches);

(iii) technical and training assistance for small-scale fishers based at PDAs and ports on the conservation of marine resources and management of marine protected areas, more efficient navigation and fishing equipment, improved techniques to maintain hygiene and fish quality and safety at sea; advisory support for the creation and development of effective fisher's associations and cooperatives and training to enable fishers to access financial services; and a gender assessment and piloting of 4 to 8 projects to integrate women into small business enterprises associated with the small-scale fisheries sector; and

(iv) resource sustainability efforts to strengthen and expand the fish stock assessment, monitoring and preservations systems at PDA sites, including: (1) Design and establishment of a network of enforceable marine protected areas to preserve the fish resource and environment in connection with PDA sites and in collaboration with local fishing communities; (2) advisory support for studying and designing an Integrated Coastal Zone Management (''ICZM'') program linked to the marine protected areas in collaboration with relevant Government agencies, as well as the United States National Oceanographic and Atmospheric Administration; and (3) design, develop, test and evaluate boat ice chests to preserve fish quality and lighter fiberglass boats to lower fuel costs and reduce the use of scarce wood resources.

(b) Wholesale Fish Markets

This Project Activity will fund the construction or rehabilitation of up to six modern wholesale fish markets in selected cities. Specifically, MCC Funding will support:

(i) construction or rehabilitation of up to 6 wholesale fish markets in major cities (Marrakech, Meknes, Taza, Tetouan, Beni-Mellal, and Rabat); and

(ii) technical and training assistance to the National Office for the Fishing Sector (Office National des Pêches or ''ONP'') and private sector users in management, hygiene and sanitation.

(c) Mobile Fish Vendors

This Project Activity will provide fresh fish transportation equipment to mobile fish vendors, together with associated technical and training assistance. Specifically, MCC Funding will support:

(i) up to 30 percent of the cost of approximately 2,000 modern, heavy duty, 3-wheeled motorbikes equipped with insulated ice chests for preserving fish quality and value; and

(ii) technical and training assistance to approximately 2,000 fish vendors in marketing, proper hygiene, product handling, quality preservation, small business management, formation of associations/cooperatives of fish vendors, and access to financial services.

3. Beneficiaries

The Small-Scale Fisheries Project is expected to benefit approximately 25,000 small-scale fishers, boat owners, wholesale fish merchants, mobile fish vendors and their household members. The development of PDAs and port facilities is intended to benefit over

22,000 small-scale fishers. It is estimated that investments in storage rooms and on-site repair facilities will reduce the cost of maintenance and repair by approximately 18 percent. On average, net revenue for fishers accessing PDA facilities will increase 30 percent. The construction and modernization of 6 wholesale markets, mostly in the interior of the country, will strengthen market integration and facilitate an increase in the number of buyers and sellers, and result in increased market-clearing quantities and a more efficient market price. It is anticipated that these improvements to the Moroccan fish market will result in increased domestic consumption of fish, rather than its use as low value fish meal. Further, it is anticipated that investments to improve standards of hygiene, handling and preservation of fish in the cold chain will contribute to the maintenance of the value of fish and greater sales. Finally, a more efficient and transparent wholesale network will contribute to the distribution of a more affordable protein source to the interior of the country where a high level of poverty exists. Approximately 2,000 mobile fish vendors, earning on average US$2,250 per year, will benefit from the Small-Scale Fisheries Project. Mobile fish vendors will be able to increase the value and volume of fish sold as well as their marketing range. As a result, it is estimated that mobile fish vendor net incomes (once their loans are repaid) will increase approximately 62 percent, enabling the vendors to exit subsistence level poverty.

4. Sustainability

Institutional Sustainability

The sustainability of the Small-Scale Fisheries Project depends on the long term viability of each major component, from first sale at the PDAs, major ports and the network of new wholesale markets, to mobile fish vendors who complete the market chain by selling to retail clients. Key factors for ensuring sustainability are the fish cooperatives at the PDA sites, ONP, and the beneficiaries themselves. ONP's management will be instrumental to the success and sustainability of the Small-Scale Fisheries Project. The PDAs and fish cooperatives are expected to be sustainable due to the Project timeframe, combined with the necessary resources for technical assistance to the fish cooperatives that will be established at each PDA site and eventually at the major ports. Each will likely require some post-project guidance, fee-paying and/or modest public assistance, from the normal ongoing services of ONP, the Department of Maritime Fisheries and its training and extension programs. The key to long term success and sustainability for the small-scale fishing enterprise is the forging of profitable commercial relationships with the fresh fish market through the auction halls at the PDAs and ports. Fishers are expected to find a strong incentive to participate in the system and will increasingly integrate into the formal sector, as long as auction halls function as efficient and self-supporting marketplaces, and fishers see increased revenues and access to benefits, such as credit, social security, and medical insurance. ONP will ensure that an effective public-private partnership is established for the management of the wholesale markets in the short term, supported by appropriate legal and institutional frameworks. The private sector is expected to take over market management in the medium to long term.

Financial Sustainability

Financial sustainability of PDAs, wholesale markets and mobile fish vendors is supported foremost through institutional sustainability, a strong and growing demand for fish, and adequate resource protection. Of potentially greatest concern is the ability for mobile fish vendors to generate increased revenues to replace their equipment at market rates when the equipment provided by the Project wears out. The financing package for the vehicles is structured to provide vendors an increase of 20 percent in net income during the loan repayment period. The investment represents a major commitment in financial and business management terms for these micro-entrepreneurs to ensure that they are drawn to the new technology.

Environmental and Social Sustainability

The Small-Scale Fisheries Project is expected to be environmentally sustainable because it is designed to increase the value of the fish caught as opposed to increasing the quantity. In addition, the Project will establish and strengthen a fish stock assessment and monitoring system at the PDA sites, develop a network of enforceable marine protected areas in collaboration with local fishing communities, and provide advisory support for the development of an ICZM program linked to the marine protected areas.

5. Environmental and Social Issues

The Small-Scale Fisheries Project is classified as Category A according to MCC Environmental Guidelines. The Government will conduct required EIAs and RAPs (each including site-specific EMPs and an HIV/AIDS awareness plan), in form and substance acceptable to MCC, corresponding to agreed upon construction packages, each of which includes PDAs, port improvements and wholesale markets. Consistent with OP 4.12, the RAPs will address issues related to physical or economic displacement and land takings related to the Project. MCC Funding will support an environmental unit at ONP to address impact assessment, monitoring and follow-up on EIAs, EMPs and RAPs. The Government will fund all resettlement compensation in accordance with RAPs approved by MCC and consistent with OP 4.12.

6. Donor Coordination

The Japanese government and the World Bank have provided ongoing technical and monetary support to the Government since 1988. The Japanese have supported extension services to small-scale fishers and construction of fishing villages similar to the ones proposed for MCC financing. There have been at least two previous donor projects to fund mobile fish vendors.

7. Government Contribution

The Government will contribute or cause to be contributed: US$7,880,000 for the Fish Landing Sights and Port Facilities Project Activity, which includes any incurred resettlement costs and in-kind contributions for design and evaluation of boat ice chests and fiberglass boats; US$4,470,000 for the Wholesale Fish Markets Project Activity related to wholesale market construction; and US$10,420,000 for Project management. The Government will fund all resettlement compensation in accordance with RAPs approved by MCC and consistent with OP 4.12.

8. Policy, Legal and Regulatory Reforms

In order to reach the full benefits of the Small-Scale Fisheries Project, the Government will:

(a) Ensure that a law regulating wholesale fish marketing by ''mareyeurs'' (wholesale fish buyers/sellers) is enacted and regulations are issued pursuant thereto no later than July 31, 2009; and

(b) Adopt and issue documentation for official registration (autorisation d'exercice) of mobile fish vendors, together with training and operating practices of eligibility and compliance and ensure that only vendors who have qualified for and received registration will become beneficiaries of the Project.

D. Artisan and Fez Medina Project

1. Background

The Artisan and Fez Medina Project will stimulate economic growth by (a) increasing value to the tourism and artisan sector through leveraging the links between the craft sector and tourism and (b) increasing the value of the cultural, historic and architectural resources of the Fez Medina. Technical training for traditional artisans will enable them to modernize their production techniques and capitalize on the growing tourist industry and export market. The Project will also strengthen the national system for literacy and vocational education to the benefit of artisans and the general population, in particular women and girls. To improve artisans' ability to invest in improved capital such as modern kilns and workshops, the Project will facilitate their access to financial services from local banks or microcredit associations. The Artisan and Fez Medina Project will also support the design and renovation or reconstruction of several prominent and historically significant sites within the Fez Medina with the goal of stimulating economic growth in the Medina.

2. Summary of Project and Activities

The Artisan and Fez Medina Project consists of the following Project Activities:

(a) Literacy and Vocational Training

This Project Activity will increase the capacities of the national training system including those managed by the National Office for Professional Training and Work Promotion (L'Office de la Formation Professionnelle et de la Promotion du Travail, or ''OFPPT'') and others to offer training for instructors, develop new skill-based career programs, purchase instructional resources and equipment, support mobile training units, upgrade artisan training centers, develop a teacher professional development program and a new instructional development production center. This Project Activity will also support remedial education and literacy training. The Parties will conduct an economic analysis to estimate the economic returns for (i) existing OFPPT programs and other vocational education programs, and (ii) remedial education and literacy programs. Based on the results of this analysis, a work plan will be developed jointly by MCC and the Government that specifies funding levels for the Project Activity for the first two years of the Compact Term and a performance monitoring plan. A review of the Project Activity will be conducted at the end of the second year of the Compact Term. MCC Funding for subsequent years and any reallocations of MCC Funding among education programs will be subject to MCC approval.

(b) Artisan Production.

This Project Activity will assist the potters of Fez and Marrakech to meet growing demand for high quality Moroccan pottery by investing in modern techniques and equipment, including cleaner burning kilns to replace traditional, high polluting, wood burning kilns. Specifically, MCC Funding will support:

(i) a technology transfer package that will include demonstrations of modern kilns and training in modern production techniques, design, marketing and business management;

(ii) financial assistance for approximately 20 percent of the kiln costs on a reimbursable grant basis; and

(iii) technical assistance for potters to facilitate access to financial services from local banks and microcredit associations.

This Project Activity will be implemented in coordination with an environmental fund financed with German assistance (Fonds de Dépollution Industrielle, or ''FODEP''), and possibly other partners, to provide up to US$2,500,000 in financing to subsidize an additional 40 percent of the cost of modern kilns.

Participation in the Project Activity by artisans is voluntary. The Government will not use MCC Funding or any other resources to offer additional subsidies or change the terms of the Project Activity in any manner to increase participation if voluntary participation is lower than expected.

(c) Fez Medina.

The Fez Medina Project Activity includes the rehabilitation or construction of five sites along the Fez Medina tourist routes. Specifically, MCC Funding will support the following:

(i) the design of the Makina, reconstruction of portions of the Makina, and the design and reconstruction of Place Lalla Ydouna (''PLY'') and three 14th and 15 century fondouks (large, multi-story structures surrounding a central courtyard);

(ii) a design competition to create effectively designed spaces at the Makina and PLY that will better serve local residents and attract visitors to Fez;

(iii) the development of a production zone at Ain Nokbi for the resettlement of copperware workers affected by the rehabilitation of PLY; and

(iv) a study to identify and evaluate options for the traditional tanneries that are consistent with reducing poverty and stimulating economic growth and that meet relevant national and international environmental, health and safety standards.

(d) Artisan Promotion.

MCC Funding will support marketing campaigns to highlight artisans and their crafts within the Medinas of Fez and Marrakech, including the creation and updating of tourist circuits. The marketing campaign will include the promotion of a craft label to clearly distinguish genuine Moroccan crafts from foreign imitations.

MCC Funding will also support a pilot international campaign to promote Moroccan artisan exports. The economic returns from this subactivity will be evaluated after the end of the second year of the Compact Term to determine whether continued MCC Funding is justified.

3. Beneficiaries

The Literacy and Vocational Training Project Activity is expected to benefit 1,000 faculty and students (reaching approximately 120,000 by the end of the Compact Term) in up to 100 targeted schools. It is expected that 50,000 master artisans will be trained in new design and production methods by the end of the Compact Term. Thirty new career tracks will be created and installed in OFPPT schools that will diversify, expand and deepen competencies of students for better employment and incomes. New policy measures and institutional capabilities will encourage matriculation among non-literate citizens of Morocco. Innovative mobile training programs are expected to reach at least 15,000 people during the Compact Term.

The Artisan Production Project Activity is expected to assist approximately 3,250 artisan workers and 550 master artisans based on projected participation in the training and purchase of modern kilns.

The Fez Medina and Artisan Promotion Project Activities are expected to reduce poverty by stimulating the Medina's main industries, tourism and artisan production, and are estimated to directly benefit approximately 20,000 low income workers in the Fez Medina.

4. Sustainability

Institutional Sustainability

The Literacy and Vocational Training Project Activity will include reforms in the management of the apprenticeship training program for artisans, including changes in the management of training centers, and launching of pilot programs to develop demand driven training.

The implementation of the technology transfer package for kilns will require capacity building within the Ministry of Tourism, Artisanat and Social Economy, which should enable it to successfully sustain these activities and to launch similar programs in the future. Specifically, the Ministry's regional delegations in Fez and Marrakech, who will play a critical role in managing the Artisan Production and Promotion Project Activities and currently do not have sufficient staff, will receive training in relevant areas, including project management, procurement, logistics, and communication.

The Fez Medina Project Activity will include institutional capacity building for the Agency for the De-densification and Rehabilitation of the Fez Medina (Agence pour la Dédensification et la Réhabilitation de la Medina de Fès, or ''ADER''). ADER staff will receive training in relevant areas, including project management, procurement, logistics, and communication.

Financial Sustainability

The Artisan Production Project Activity will include a demonstration program providing potters with the opportunity to practice producing their own products using modern kilns—as well as practice producing new products for new markets (e.g., high end tourist shops) that take advantage of the expanded capabilities of modern kilns—before committing to the transition. In addition, the cost sharing component of this program should help ensure beneficiary buy-in by including only potters willing to contribute a significant portion of the kiln cost, using their own or borrowed funds. These demonstrations and cost sharing, combined with the significant training in production, marketing and design, should lead to potters generating enough profit to pay for the higher cost of operating modern kilns. In addition, reimbursement from the potters of MCC Funding for the purchase of modern kilns will be paid into an account that will potentially be dedicated to the funding of an education program for child laborers in the Moroccan pottery industry, or other uses mutually agreed to by the Government and MCC.

Operation and maintenance of the newly renovated buildings in the Fez Medina will be ensured through the involvement of the private sector in the development and management of each site. The design competition will ensure that the designs will be demand driven. Profits generated from the transfer of management or use rights to the private sector will be paid into an account that will potentially be dedicated to the funding of public projects in the Medina. An agreement governing the use and management of the funds will be reached between MCC and the Government before the end of the fourth year of the Compact Term.

The Government envisions continuing support for the Artisan Promotion Project Activity after the Compact Term through financing from artisans and artisan cooperatives, traders and retailers, private enterprises, and public funds from national, regional and city administrations. The firm chosen to implement the Project Activity will evaluate private organizations with the goal of selecting one to take over the management of the craft label and other promotion activities before the end of the Compact Term.

Environmental and Social Sustainability

Environmental and social sustainability of the Artisan and Fez Medina Project will be promoted through the Project's contribution to the rehabilitation, preservation and enhancement of the cultural and historic value of the Fez Medina consistent with UNESCO objectives, support for artisans to transition to modern kilns from highly polluting and unsafe traditional kilns, and the promotion of better waste management practices in the Medina. The Government will undertake steps to clean up the river and areas adjacent to PLY, and MCC Funding will support a public awareness campaign for better waste management in the Medina and a study to identify alternatives to address highly polluting and hazardous conditions at traditional tanneries in the Fez Medina.

5. Environmental and Social Issues

The Artisan and Fez Medina Project is classified as Category A, because many of the Project Activities (exclusive of the training and promotion activities) are located in or near the Fez Medina—a cultural and historic heritage site of great significance and sensitivity, and the first Moroccan site to be designated as a UNESCO World Heritage Site. All activities in the Fez Medina and the Artisan Production Activities will require full impact assessment, including a consultative process, and will comply with Moroccan laws concerning water quality, air quality, waste management and disposal, and the preservation of historic buildings and sites. The EIAs will incorporate a consultative process; will be conducted in conjunction with the feasibility and design efforts and will address all direct, indirect, and cumulative impacts; and will require EMPs to be developed and implemented.

There will be two EIAs for the Artisan and Fez Medina Project. The Fez Medina Project Activity involves involuntary resettlement and requires a RAP consistent with OP 4.12. The Government will conduct the first EIA, including an EMP, and the RAP. The first EIA will cover the Artisan Production Project Activity, the Makina, the fondouks, PLY, and Ain Nokbi, which serves as a resettlement site for copperware workers. The first EIA will analyze the proposed kilns to be purchased as part of the Artisan Production Project Activity to ensure they can be installed and used safely and meet air pollution standards acceptable to MCC. Kiln acquisitions will only be supported in locations where they can be installed and operated safely in a manner consistent with Moroccan laws and regulations. This EIA will also include a review of child labor issues and recommend remedies for any abusive practices. Repayments of the kiln grants may be used to fund a program to address child labor in the Moroccan pottery industry. With respect to the Makina and the PLY, the first EIA will provide only the baseline inventory, an analysis of environmental constraints/opportunities, identification of infrastructure gaps that would affect design competition options and baseline data on households and businesses. Once the design competition of the Makina and PLY is completed, the selected firm(s) will conduct the second EIA of the winning designs using MCC Funding and will develop an EMP to be implemented by appropriate stakeholders. The aspects of the two EIAs and EMPs related to the Fez Medina Project Activity will involve the Ministry of Culture and UNESCO, and provide specific requirements for managing restoration, rehabilitation and reconstruction, and chance finds in accordance with the MCC Environmental Guidelines and applicable Moroccan laws and regulations. MCC Funding will also fund environmental units for the Ministry of Artisanat and ADER to support environmental impact assessment, monitoring and follow-up on EMPs and RAPs.

6. Donor Coordination

In developing the Artisan and Fez Medina Project, MCC has held numerous discussions with donors to understand previous and ongoing projects in the sector, both in Morocco and internationally. MCC support for acquisition of kilns for potters builds

significantly upon those experiences. The Artisan Production Project Activity will be implemented in coordination with FODEP, and possibly other partners to provide up to US$2,500,000 in additional financing for modern kilns. UNESCO will be involved in the design competition and other aspects of the Fez Medina Activity. Cluster-skills models being supported by Spain in other countries will be imported to Morocco with Spanish financial support. The International Labor Organization will lend skills certification resources to support the creation of new programs. The Literacy and Vocational Training Project Activity will be coordinated with the European Union's MEDA II project, which is currently strengthening OFPPT capacities in a number of career fields.

7. Government Contribution

The Government will cause to be contributed US$40,000,000 plus an estimated 10 percent contingency, for the renovation and reconstruction of the Makina, as well as ensure that all additional funding necessary for completion of the Makina is made available through additional contributions, private sector, or other donor financing. The Government will also provide the necessary funding for environmental remediation on the river Oued Boukhrareb, the renovation of the riverbanks near PLY and the acquisition and unification of property at PLY and the fondouks. In addition, the Government will fund an initial census of occupants at PLY and urgent preliminary works at the Makina and the fondouks, the scope of which will be subject to MCC approval.

For all sites within the Fez Medina Project Activity, the Government will ensure that the property is acquired and held in a single public entity to be approved by MCC. Unification of ownership of all sites will be a condition to Disbursements as more specifically set forth in the Project Implementation Agreement.

The Government will make the Ain Nokbi site available for resettlement of copperware workers physically and economically displaced as a result of the Fez Medina Project Activity.

8. Policy, Legal and Regulatory Reforms

The Government will ensure that Régie Autonome d'Eau et d'Electricitó de Fès will make a commitment by the end of 2007 that wastewater will not be transmitted via the river Oued Boukhrareb.

E. Financial Services Project

1. Background

The Financial Services Project is expected to increase financial services for micro-enterprises in Morocco by addressing the key constraints to the development of a broader, deeper, market-based financial sector.

2. Summary of Project and Activities

The Financial Services Project consists of the following Project Activities:

(a) Access to Funds for Microfinance.

MCC Funding will support an investment in Jaida S.A, a non-bank financial institution launched in late 2006 to provide debt funding to the Moroccan microcredit sector. Jaida is designed to be a market solution to a potential financing gap, and it will offer products tailored according to the risk of each microcredit association. MCC Funding to support Jaida will be provided to the maximum extent possible on market terms, so that such lending does not crowd out or impede market-based lending by commercial banks to microcredit associations or result in subsidized lending to these associations. Subject to MCC approval, it is anticipated that the investment in Jaida will be in the form of subordinated debt.

Prior to the end of the fourth year of the Compact Term, MCA-Morocco will develop a plan, acceptable to MCC, for the disposition of all proceeds and assets remaining at the end of the Compact Term. The Parties expect that neither MCC Funding nor the proceeds of loans repaid by Jaida will be used to make new loans to Jaida after the end of the Compact Term.

(b) New Financial Product Development.

Several microcredit associations in Morocco have begun to explore the possibility of changing their legal structure in order to mobilize equity from shareholders, as well as to accept savings deposits and offer other non-credit financial services (i.e., to undergo ''transformation'').

MCC Funding will support the analysis of the regulatory and operational requirements for transformation. Other issues related to extending a broader set of financial services to clients, including the possibility for partnerships between the microcredit and banking sectors, will also be analyzed. An important output will be a detailed action plan, acceptable to the Government and MCC, including the appropriate legal structure for transformation, next steps for the sector, and timeline for completing any necessary changes. The associations and their network will be consulted throughout the development and validation of the action plan. MCC Funding will also support technical assistance to financial institutions to help implement the recommendations from the action plan.

(c) Improvement of Operating Efficiency and Transparency.

MCC Funding will help financial institutions improve their operating efficiency and build transparency through support for:

(i) sustainable technologies proposed by institutions, with preference given to innovative and experimental approaches;

(ii) preparation for microcredit associations' compliance with Central Bank requirements for data to be submitted to the credit bureau;

(iii) mobile branches to encourage microcredit associations to test new approaches for expanding their geographic reach;

(iv) building financial institutions' understanding of the priority sectors to highlight the potential of these sectors and provide information on which to base investment decisions, and

(v) partial financing of institutional ratings for microcredit associations.

3. Beneficiaries

The key beneficiaries of the Financial Services Project will be clients (small borrowers such as individuals or micro-enterprises) of microcredit associations operating in Morocco. The intended impact of the Project is to increase the supply of financial services for these clients. Furthermore, to the extent that the Project causes investments that lead to service upgrades and helps microcredit associations improve efficiency, clients should benefit from better services, and either some additional increase in lending or reduction in borrowing costs. Today, the microcredit sector serves approximately 1.2 million clients. Assuming the Project facilitates a net increase in the client growth rate of a quarter of one percent per year, and assuming that without the Project the client growth rate is 30 percent per year, then there would be 43,000 additional clients by the end of the Compact Term. If the net increase in growth is one percent per year, there would be 174,000 additional clients by the end of the Compact Term.

4. Sustainability

Institutional Sustainability

MCC funding will support technical assistance for selected microcredit associations to implement the legal,

management and operational requirements necessary for sustainable transformation. The Project will also help associations evaluate the various options available, including options regarding how to grow in a sustainable manner within the new regulatory environment without transforming. Support to prepare associations for the introduction of a universal credit bureau, as well as to use technologies to reduce costs while expanding breadth of outreach, are also expected to contribute to the sustainability of the sector.

Financial Sustainability

The Financial Services Project seeks to make microcredit associations more efficient and reduce transaction costs in order to lower operating costs and further improve their financial sustainability. Furthermore, access to credit and other financial services is expected to enable the clients of these institutions to make profitable investments and improve the financial sustainability of their own enterprises.

Environmental and Social Sustainability

Environmental and social sustainability of the Financial Services Project will be promoted through: application of lending guidelines and procedures to ensure compliance with the MCC Environmental Guidelines, MCC Gender Policy and OP 4.12; requiring adequate institutional capacity for Jaida to implement these guidelines and procedures; and by providing training for the associations in environmental and social screening.

5. Environmental and Social Issues

The Financial Services project is classified as Category D according to MCC Environmental Guidelines. Prior to the first Disbursement to Jaida, Jaida will be required to supplement or revise, in a manner acceptable in form and substance to MCC, the lending guidelines and procedures required for associations to which it lends to ensure that they meet MCC Environmental Guidelines, MCC Gender Policy, and OP 4.12. Jaida will demonstrate commitment and adequate resources to implementing the procedure and will take action to remedy any gaps in implementation on an ongoing basis. MCC and MCA-Morocco will be provided with an annual reporting summarizing the social and environmental performance of associations to which Jaida lends. The Financial Services Project will incorporate training for associations in environmental and social screening and/or guidelines and include outreach to women.

6. Donor Coordination

The Financial Services Project builds on and complements the strategic priorities that have been articulated by other donors and industry professionals. MCC has held numerous meetings with donors either currently or previously active in the financial sector in Morocco, including, but not limited to, USAID, KfW, AFD, Consultative Group to Assist the Poor (''CGAP''), the World Bank, and the International Finance Corporation. MCC will join a number of other donors in supporting Jaida (KfW and AFD are both shareholders); the support to innovations in technology will build on a similar global program implemented by CGAP with funding from the Gates Foundation; and the support to institutional ratings will build on a recent global initiative of the IDB, European Union and CGAP. Continued coordination will be a priority throughout implementation, and especially during the development of the action plan for transformation.

7. Policy, Legal and Regulatory Reforms

The Government will take the necessary actions to allow those microcredit associations that are ready and willing to do so to undergo institutional transformation, following the results of a study analyzing the relevant legal and operational requirements. This study will build on global best practices as well as previous analyses done in Morocco, and will result in a detailed action plan to be reviewed by all relevant stakeholders and agreed to by the Government and MCC. The action plan is expected to be completed and agreed to by no later than the end of 2008, and the Government will take the necessary relevant actions by no later than the end of 2009.

F. Enterprise Support Project

1. Background

The Enterprise Support Project will measure and improve the outcomes of two existing high priority Government initiatives, Moukawalati and INDH. The Enterprise Support Project is structured in two phases: First, a set of three pilots will measure the impact of several training initiatives offered to current beneficiaries of these Government programs who would receive further training and technical assistance designed to increase their rate of survival. Second, if results reported by an independently conducted evaluation are promising, training initiatives will be expanded beginning in the third year of the Compact Term. In addition, the Government agency sponsors of the programs would receive support to help them better manage the selection and training processes for these entrepreneurs.

2. Summary of Project and Activities

The Enterprise Support Project consists of the following Project Activities:

(a) Moukawalati and INDH.

Moukawalati is a program to create a more entrepreneurial culture and to address high unemployment rates for Morocco's youth, particularly among new graduates. Under the Moukawalati program, Government funds will be used to help entrepreneurs develop business plans and to get bank funding. MCC Funding will support additional business skills training to an enterprise, but only after the entrepreneur has satisfied all other registration requirements and has been approved for a bank loan. Two pilot programs will be run, one by OFPPT, and one by the National Agency for the Promotion of Small and Medium Enterprises (Agence Nationale pour la Promotion de la Petite et Moyenne Entreprise, or ''ANPME''). A third pilot will test whether the training provided to INDH beneficiaries (typically cooperatives and other forms of income generating associations) helps them to increase sales and be more sustainable. The educational background of target groups under each of the pilots is different and the form of the training provided, e.g., group vs. individual training, will also vary from pilot to pilot. The amount of MCC Funding for these Project Activities will be allocated in accordance with the Government entity implementing each Project Activity as set forth in the Multi-Year Financial Plan Summary as set forth in Annex II.

(b) Training Scale-Up

During the pilot phases, independent evaluations will be conducted to compare firms who receive technical support and those that do not and assess variations in key indicators of firms' health—survival rates and revenues. At the end of the pilot, the Parties will consult to determine whether the results merit a scaling-up of the training activity to include up to 6,000 enterprises and associations over the remaining Compact Term.

3. Beneficiaries

During the pilot project phases, approximately 600 enterprises will receive training. Four hundred will be new enterprises initiated under Moukawalati (200 each managed by ANPME and OFPPT) and 200 revenue generating groups initiated under INDH.

Subsequent to the pilot period, it is assumed that up to 4,000 enterprises created under Moukawalati will receive technical assistance and up to 2,000 INDH groups will receive similar support. SMEs created under Moukawalati will typically have fewer than five employees. Groups receiving Government grants under the INDH program will typically consist of about 20 participants. INDH beneficiaries will be drawn either from 250 target neighborhoods in 25 cities or one of 348 communes where the rates of poverty are in excess of 30 percent.

4. Sustainability

Institutional Sustainability

The ultimate beneficiaries are the enterprises that survive and continue to create jobs and income in numbers exceeding their expected survival rate. For example, the expected business survival rate in Morocco after two years is approximately 70 percent; a rate of survival in excess of that would begin to repay the Government of Morocco's investments in Moukawalati and INDH. In addition, OFPPT, which will offer entrepreneurship-supporting courses and training for the first time, will be assisted through its own start-up phase for these activities. ANPME, OFPPT and INDH will each receive assistance, respectively, to strengthen their abilities to deliver training content. Finally, consultants and consulting firms that provide the hands-on training to the SMEs and associations will be given a chance to demonstrate their abilities to contribute to enterprise growth and sustainability.

Financial Sustainability

The activities proposed to strengthen new enterprises created with the help of government programs reduce Government losses from loan guarantee schemes, increase tax revenues, and provide other actionable feedback to the Government regarding the effectiveness of its programs. The programs will be scaled up if it can be demonstrated that the benefits of the programs more than offset the costs of delivering them.

5. Environmental and Social Issues

The Enterprise Support Project is classified as Category C, according to MCC Environmental Guidelines as Project Activities are unlikely to have any direct or indirect impacts on the environment. As the proposed interventions entail monitoring and evaluation of training and development of pilots, the Project will incorporate proactive measures, as appropriate, regarding environmental sustainability for SME clients. All pilot activities will be re-evaluated during the Compact Term to determine whether this classification should be changed and subject to environmental assessments and/or RAPs.

6. Donor Coordination

In developing the Enterprise Support Project, MCC has met with the World Bank, AFD and other supporters of the INDH program. UNIDO and Agencia Española de Cooperacíon Internacional have supported women entrepreneurs engaged in the agro-industry. The European Union and GTZ have sponsored several enterprise support programs directed at SMEs on which part of the proposed Project is modeled.

7. USAID

USAID has sponsored a number of interventions directed at artisans and other small businesses that are looking to take advantage of the United States–Morocco Free Trade Agreement. Lessons have been drawn from their work, and MCC will share its own experience during the pilot activity with other donors engaged in the sector.

G. Implementation Framework

1. Overview

Unless otherwise agreed to by the Parties in writing, the implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring and evaluation and fiscal accountability for the use of MCC Funding is summarized below. MCC and the Government will enter into the PIA, and any other agreements in connection with this Compact, which will further set forth the rights and responsibilities of the Parties relating to the implementation of the Program.

2. MCC

MCC will take all appropriate actions to carry out its responsibilities in connection with this Compact and the PIA, including the exercise of its approval rights in connection with the implementation of the Program.

3. Government and MCA-Morocco

The Government, through passage of a law, will create an independent agency (an ''établissement public'') (''MCA-Morocco''), which will be authorized to act on behalf of the Government in order to manage and oversee the implementation of this Compact and the Program. MCA-Morocco will have full decision-making autonomy, including, inter alia, the ability, without consultation with, or the consent or approval of, any other party, to (a) enter into contracts in its own name, (b) sue and be sued, (c) establish an account in a financial institution in the name of MCA-Morocco and hold MCC Funding in that account, (d) expend MCC Funding, (e) engage the Ministry of Finance as a fiscal agent on terms acceptable to MCC, (f) engage one or more procurement agents who will act on behalf of MCA-Morocco to manage the acquisition of the goods, works and services requested by MCA-Morocco to implement the activities funded by this Compact, and (g) competitively engage one or more auditors to conduct audits of its accounts. The governance of MCA-Morocco will be set forth in more detail in the PIA, the constitutive documents and internal regulations of MCA-Morocco (''Internal Regulations'') or as otherwise agreed in writing by the Parties. The Internal Regulations will be in accordance with MCC's Guidelines for Accountable Entities and Implementation Structures, published on the MCC Web site (the ''Governance Guidelines'').

MCA-Morocco will be headquartered in Rabat.

MCA-Morocco will be composed of (a) a strategic steering committee (the ''Strategic Steering Committee'' or ''SSC'') and (b) a management unit (the ''Management Unit''). MCA-Morocco will also establish and consult regularly with one or more stakeholders' committees, and MCA-Morocco will use various Government entities to help implement specific Projects.

(a) Strategic Steering Committee.

(i) Composition. Unless otherwise agreed by the Parties, the Strategic Steering Committee will be chaired by the Prime Minister (or its designee) and be comprised of nine voting members, including (1) the chair; (2) one representative from each of the Ministries of: Finance; Agriculture; Interior; Land Planning, Water and Environment; and Artisanat; (3) one representative from the business sector (Confédération Généerale des Enterprises Marocaines (CGEM)); and (4) two representatives from civil society. One of the two civil society representatives will represent microcredit associations, and the other will be nominated by a women's group. The Director General of MCA-Morocco and the MCC representative in Morocco, among others, will be non-voting members. No remuneration will be paid to any Government representative on the Strategic Steering Committee.

(ii) Roles and Responsibilities. The Strategic Steering Committee will be responsible for overseeing the implementation of the Program, including making major decisions, such as approving annual implementation

plans, disbursement requests, annual progress reports and key contracts and reporting on policy reforms, as well as other responsibilities defined in the Internal Regulations. The SSC will meet regularly. The frequency of SSC meetings will be set forth in the Internal Regulations and will be in accordance with the Governance Guidelines. The specific roles of the voting and non-voting members will be set out in the Internal Regulations.

(b) Management Unit.

(i) Composition. The Management Unit, led by a competitively selected Director General, will also be composed of competitively selected directors with expertise in the key components of the program (agriculture, fisheries, artisan, financial services and enterprise support) and key employees, including a chief financial officer, legal counsel and directors of environmental and social impact, procurement and monitoring and evaluation.

(ii) Location. The Management Unit will be based in Rabat.

(iii) Roles and Responsibilities. The Management Unit will be responsible for managing the day-to-day implementation of the Program with oversight from the SSC.

4. Stakeholders' Committees

(a) Composition.

To ensure the continuation of the consultative process throughout Compact implementation, the Government will, consistent with the Governance Guidelines, establish, or will make use of pre-established groups to serve as stakeholders' committees, the size and composition of which will be designed to maximize participation at the Program, Project and Project Activity levels and include key NGOs, the private sector, civil society, and local and regional governments.

(b) Location

The stakeholders' committees will convene where appropriate to ensure maximum participation in providing feedback on Program and Project implementation.

(c) Roles and Responsibilities.

The Strategic Steering Committee will consult with the stakeholders' committees on a regular basis or at the request of a stakeholders' committee as set forth in the Internal Regulations. The stakeholders' committees will receive and review certain reports, agreements and documents, including implementation documents, and will provide advice and feedback regarding Program implementation.

5. Fez Medina Project Activity Advisory Committee

MCA-Morocco will establish an advisory committee (the ''Committee'') to coordinate the activities of other agencies and stakeholders in connection with implementation of the Fez Medina Project Activity, and to advise and assist ADER as implementing entity for the Fez Medina Project Activity.

(a) Composition.

The Committee will be chaired by the Wali of Fez and will include the Mayor of Fez (or designee), the Secretaries General of Artisanat and Tourism (or designees), and representatives of the Ministry of Culture, the Agence Urbaine, UNESCO, the Medina's neighborhood associations, Fez's artisan associations, key NGOs, experts in historic preservation, and the private sector. The final size and composition of the Committee will be agreed upon between MCC and MCA-Morocco.

(b) Frequency and Location of Meetings.

The Committee will convene as frequently as necessary, but at least quarterly, to provide ADER with feedback and support related to implementation of the Fez Medina Project Activity. Meetings will be held in Fez or in other locations as required to achieve the purpose of the meeting.

(c) Roles and Responsibilities.

ADER will provide the Committee with short status reports in advance of each meeting summarizing the status of ongoing activities, and key issues and constraints affecting implementation of the Project Activity. The Committee will provide ADER with support to enable it to effectively implement the Project Activity, including guidance and advice on key elements of the Project Activity, such as decisions affecting the proposed uses of the sites, the mechanisms for soliciting private participation and investment in renovations, the guidelines for the design competition, resettlement and expropriation matters, environmental cleanup measures, public outreach programs, the effect of the Project Activity on women and underrepresented or vulnerable groups, and the makeup of the jury of the design competition. The Committee will be responsible for assisting ADER in obtaining the cooperation of other agencies and groups in order to ensure smooth and timely implementation of the Project Activity. The Committee will ensure mechanisms for residents of the Fez Medina, civil society, artisan groups, and the private sector to provide input into the Fez Medina Project Activity.

6. Implementing Entities

(a) Composition.

The Government and MCC will identify the principal ministries and public institutions that will serve as implementing entities (each, an ''Implementing Entity''). They include, but are not limited to, the Ministries of Agriculture and Artisanat, as well as ONP and ADER. MCA-Morocco will enter into agreements with the Implementing Entities that set forth their roles and responsibilities in connection with Program implementation.

(b) Location.

Implementation of the Fruit Tree Productivity, Small-Scale Fisheries, and Artisan and Fez Medina Projects will require, and other Projects may require, the services of dedicated implementation teams within the Implementing Entities. Additional personnel to be based within the Implementing Entities may be contracted by MCA-Morocco where appropriate.

(c) Roles and Responsibility.

The Implementing Entities will be responsible for coordination of the activities of various contractors, achievement of Project Objectives and timelines; development of Compact-related requirements (work plans, detailed financial plans, and quarterly reports), procurement (where MCC has determined that procurement tasks may be performed by the Implementing Entity) and performance monitoring of contractors.

7. Fiscal Agent

The Ministry of Finance will serve as the fiscal agent for the Program, assisted by a ''fiscal coordination unit'' within the Ministry of Finance, charged with all financial issues, including regular reporting to MCA-Morocco on global and activity-specific budget concerns, and the maintenance and security of the financial information management system. Reporting will be coordinated by the chief financial officer and procurement officer within MCA-Morocco.

8. Procurement Agent

Unless otherwise agreed to by the Parties, MCA-Morocco will engage up to five procurement agents from within the Government, assisted by an MCC-funded procurement oversight advisor and supported by MCC-funded capacity building and technical assistance. The procurement oversight advisor will act as procurement agent in areas where such services are required.

Annex II Summary of the Multi-Year Financial Plan

1. General

The Multi-Year Financial Plan Summary below sets forth the estimated annual contribution of MCC Funding for Program administration, Program monitoring and evaluation, and implementing each Project. The Government's contribution of resources will consist of in-kind contributions and amounts required effectively to satisfy the requirements of Section 2.5(a) of this Compact. In accordance with the PIA, the Government will develop and adopt on a quarterly basis a detailed financial plan (as approved by MCC) setting forth annual and quarterly funding requirements for the Program (including administrative costs) and for each Project, projected both on a commitment and cash requirement basis.

2. Modifications

To preserve administrative flexibility, the Parties may by written agreement (or as otherwise provided in the PIA), without amending this Compact, change the designations and allocations of MCC Funding among the Projects, the Project Activities, or any activity under Program administration or monitoring and evaluation, or between a Project identified as of the entry into force of this Compact and a new project; provided, however, that any such change (a) is consistent with the Program Objective and Project Objectives, (b) does not materially adversely affect the applicable Project or any activity under Program administration or monitoring and evaluation, (c) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1 of this Compact, and (d) does not cause the Government's obligations or responsibilities or overall contribution of resources to be less than specified in Section 2.5(a) of this Compact.

3. Mid-Term Review

The Parties will jointly conduct a comprehensive mid-term performance review at the completion of the second year after entry into force. Based on quantifiable performance indicators included in the M&E Plan developed pursuant to Annex III, Projects will be rated as ''underperforming,'' ''satisfactory'' or ''overperforming.'' The Parties may agree to modify the Multi-Year Financial Plan in accordance with the preceding paragraph to reflect the results of the performance review.

MULTI-YEAR FINANCIAL PLAN SUMMARY (US$)

Project	CIF	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Fruit Tree Productivity:							
A. Rain-fed Olive, Almond and Fig Tree Intensification and Expansion	1,992,941	10,178,721	42,019,029	56,225,017	41,559,806	17,531,311	169,506,825
B. Olive Tree Irrigation and Intensification	1,892,000	5,102,247	22,430,100	20,332,624	5,711,029	2,948,856	58,416,856
C. Date Tree Irrigation and Intensification	1,052,118	5,875,447	14,084,800	11,518,565	8,646,888	5,858,947	47,036,765
D. Fruit Tree Sector Services	2,022,706	4,704,118	5,784,706	5,784,706	4,878,824	2,762,941	25,938,001
Subtotal	6,959,765	25,860,533	84,318,635	93,860,912	60,796,547	29,102,055	300,898,447
2. Small-Scale Fisheries:							
A. Development of Fish Landing Sites and Port Facilities	3,935,705	22,331,581	24,601,377	27,923,683	2,202,878	2,184,054	83,179,278
B. Development of Wholesale Fish Markets	2,246,640	12,045,242	10,295,442	5,012,015	47,647	47,647	29,694,633
C. Support to Mobile Fish Vendors	823,529	1,070,588	905,882	494,118	0	0	3,294,117
Subtotal	7,005,874	35,447,411	35,802,701	33,429,816	2,250,525	2,231,701	116,168,028
3. Artisan and Fez Medina:							
A. Literacy and Vocational Education	0	3,900,000	10,900,000	10,500,000	5,000,000	2,500,000	32,800,000
B. Artisan Production	0	430,375	430,375	1,446,000	1,446,000	821,000	4,573,750
C. Fez Medina	6,142,437	11,352,814	21,345,322	9,019,845	8,019,845	8,019,845	63,900,108
D. Artisan Promotion	0	200,000	200,000	3,600,000	4,600,000	2,000,000	10,600,000
Subtotal	6,142,437	15,883,189	32,875,697	24,565,845	19,065,845	13,340,845	111,873,858
4. Financial Services:							
A. Access to Funds for Microfinance	0	13,000,000	8,000,000	2,500,000	2,500,000	0	26,000,000
B. New Financial Product Development	500,000	1,000,000	2,000,000	1,000,000	1,000,000	500,000	6,000,000

MULTI-YEAR FINANCIAL PLAN SUMMARY (US$)—Continued

Project	CIF	Year 1	Year 2	Year 3	Year 4	Year 5	Total
C. Improvement of Operating Efficiency and Transparency	0	5,300,000	4,100,000	3,200,000	800,000	800,000	14,200,000
Subtotal	500,000	19,300,000	14,100,000	6,700,000	4,300,000	1,300,000	46,200,000
5. Enterprise Support:							
A. ANPME Training	0	690,000	640,000	3,270,000	6,310,733	2,975,335	13,886,068
B. OFPPT Training	0	760,000	260,000	3,570,000	4,872,533	1,190,333	10,652,866
C. INDH Training ..	0	730,000	180,000	3,450,000	4,097,333	853,733	9,311,066
Subtotal	0	2,180,000	1,080,000	10,290,000	15,280,599	5,019,401	33,850,000
6. Monitoring and Evaluation:							
Monitoring and Evaluation	1,840,000	3,666,000	4,041,000	3,643,000	3,030,000	4,523,000	20,743,000
Subtotal	1,840,000	3,666,000	4,041,000	3,643,000	3,030,000	4,523,000	20,743,000
7. Program Administration and Oversight:							
A. MCA-Morocco & Implementing Entities	7,251,924	11,176,660	10,438,942	10,522,703	9,065,939	8,310,499	56,766,667
B. Fiscal Agent	150,000	150,000	154,500	160,500	165,000	170,000	950,000
C. Procurement Agents	2,500,000	1,700,000	1,000,000	1,000,000	1,000,000	1,000,000	8,200,000
D. Auditing	50,000	100,000	200,000	500,000	500,000	500,000	1,850,000
Subtotal	9,951,924	13,126,660	11,793,442	12,183,203	10,730,939	9,980,499	67,766,667
Total Estimated MCC Contribution	32,400,000	115,463,793	184,011,475	184,672,776	115,454,455	65,497,501	697,500,000

Annex III Description of the Monitoring and Evaluation Plan

This Annex III to this Compact (the ''M&E Annex'') generally describes the components of the Monitoring and Evaluation Plan (''M&E Plan'') for the Program.

1. Overview

MCC and the Government (or a mutually acceptable Government affiliate) will formulate, agree to and the Government will implement, or cause to be implemented, an M&E Plan that specifies (a) how progress toward the Program goal and objectives will be monitored, (''Monitoring Component''), (b) process and timeline for the monitoring of planned, ongoing, or completed project activities to determine their efficiency and effectiveness, and (c) a methodology for assessment and rigorous evaluation of the outcomes and impact of the Program (''Evaluation Component''). Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as progress and other reports, will be made publicly available on the Web site of MCA-Morocco and elsewhere.

2. Program Logic

The M&E Plan will be built on a series of logic models which illustrate how the Program, Projects and Project Activities contribute to poverty reduction and economic growth in Morocco. The logic models below provide a visual representation of each Project's activities and the channels through which the activities lead to higher level outcomes and objectives. In sum, the goal of the Program is to contribute to economic growth and poverty reduction among targeted beneficiaries in the fruit tree, small scale fishing, artisan and tourism, and micro, small and medium enterprise sectors. The following logic diagrams illustrate how the each of the Projects addresses poverty reduction in these sectors:

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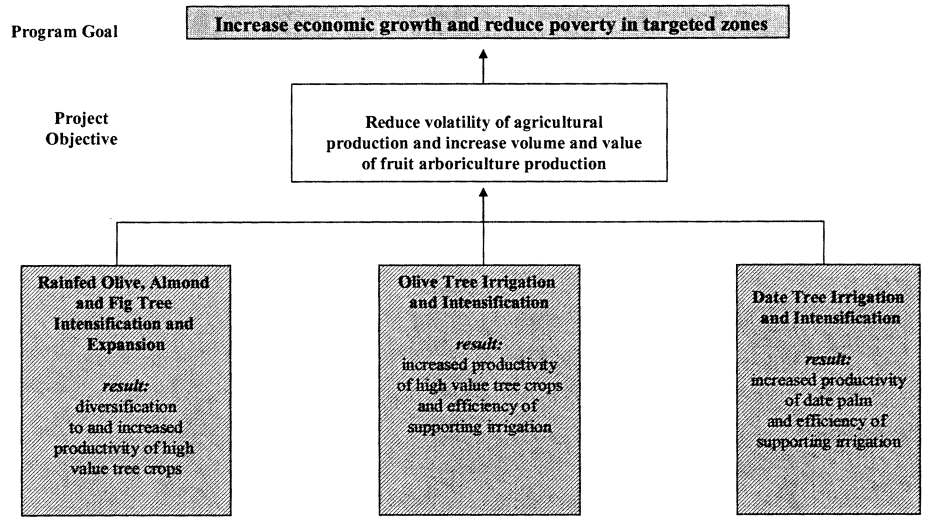
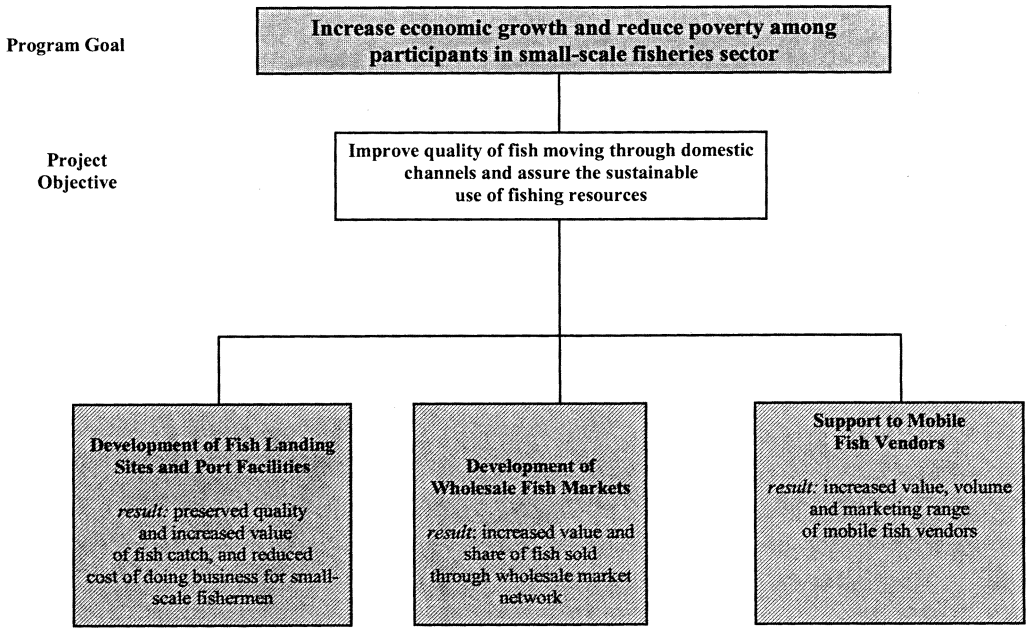
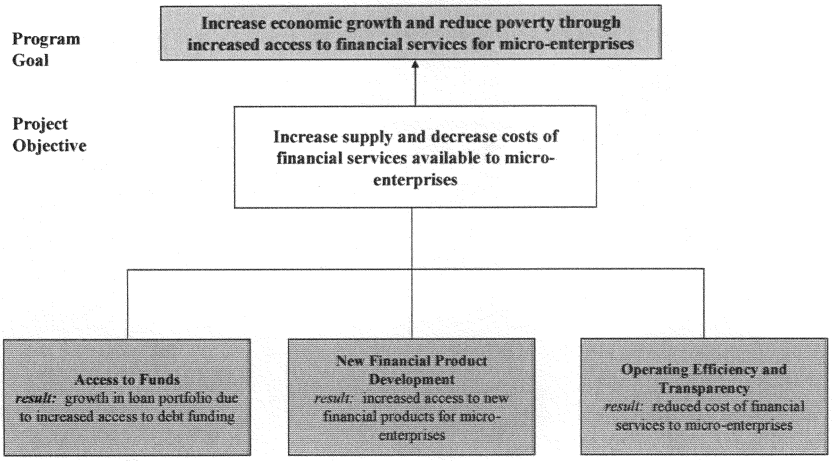
Fruit Tree Productivity Project
Logic Model



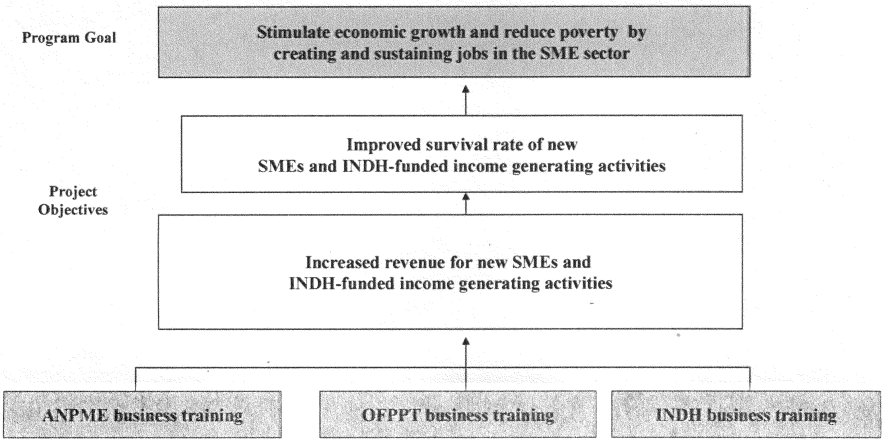
Small-Scale Fisheries Project
Logic Model



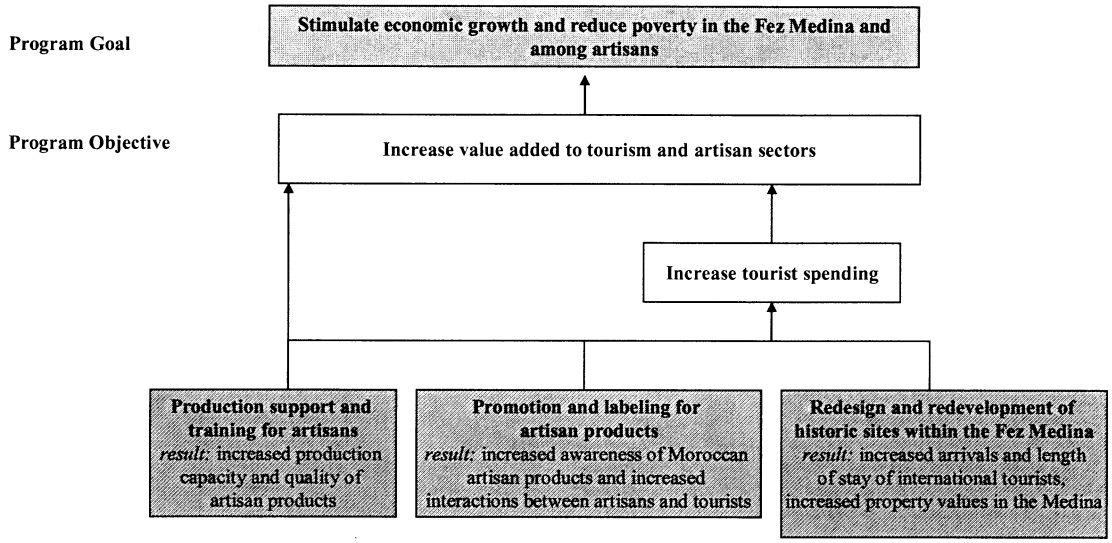
Financial Services Project
Logic Model



Enterprise Support Project
Logic Model



Artisan and Fez Medina Project
Logic Model



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3. Monitoring Component

To monitor progress toward the achievement of the impact and outcomes, the Monitoring Component of the M&E Plan will identify (a) the indicators, (b) the definitions of the indicators, (c) the sources and methods for data collection, (d) the frequency for data collection, (e) the party or parties responsible, and (f) the timeline for reporting on each indicator to MCC.

Further, the Monitoring Component will track changes in beneficiary income during the Compact Term. Before the disbursement of funds for each Project, MCA-Morocco will collect baseline data on beneficiary income or verify already collected beneficiary income data. One method for measuring and calculating beneficiary income across all projects will be agreed upon between MCC and MCA-Morocco before entry into force of this Compact.

(a) Indicators. The M&E Plan will measure the results of the Program using quantitative, objective and reliable data (''Indicators''). Each indicator will have benchmarks that specify the expected value and the expected time by which that result will be achieved (''Target''). The M&E Plan will be based on a logical framework approach that classifies indicators as goal, objective, outcome, and output. The Compact Goal indicators (''Goal Indicators'') will measure the poverty reduction goal for each Project. Second, the Objective Indicator (''Project Objective Indicators'') will measure the final result of each Project. Third, Outcome and Output Indicators (''Project Activity Indicators'') will measure the early and intermediate results of the Project Activities. For each Project Activity Indicator, Project Objective Indicator, and Goal Indicator, the M&E Plan will define a strategy for obtaining and verifying the value of such indicator prior to undertaking any activity that affects the value of such Indicator (such value, a ''Baseline''). All indicators will be disaggregated by gender, income level and age, and beneficiary types to the extent practicable. Subject to prior written approval from MCC, MCA-Morocco may add indicators or refine the definitions and Targets of existing indicators.

(i) Goal and Project Objectives. The M&E Plan will contain the Goal and Objective Indicators listed in the table below specifying the definition, unit of observation, baseline, and end of Compact Target for each.

Indicator	Definition of indicators	Unit of measurement	Baseline	Year 5
Agricultural net revenue per farm.	Average agricultural net revenue per farm benefiting from MCA Project.	$/household/year ..	1,131 in rain-fed; 1,756 in PMH; 2,082 in oasis.	Increase over comparison farms in year 10: 64% rain-fed, 62% PMH, 52% oasis. [2]
Wages and Profits	Change in wages and profits of tourism related businesses in Fez.	Million $/year	113	Increase 79% over baseline and 8% over predicted counterfactual.
Wages and Profits	Changes in wages and profits of artisans in the intervention areas: potters in Fez and Marrakech, all artisans working in the fondouks, the Makina & Place Lalla Ydouna.	$/month	TBD after collection of baseline data ..	TBD after collection of baseline data.

Indicator	Definition of indicators	Unit of measurement	Baseline	Year 5
Total tourist spending in Fez.	Total annual tourism spending in Fez	Million $/year	226	Increase 79% over baseline and 8% over predicted counterfactual.
Number of active clients of microfinance institutions.	Number of individuals who are active clients. A person with more than one account with the institution is counted as a single client in this measure.[3]	Persons	1.2 million	4 million.

[2] Year 10 target.
[3] Target assumes a natural growth of 30 percent in the number of clients. MCC economic analysis estimates that the increase in clients due to the Project will range from .25 to 1 percent above the natural growth rate. Of the 4 million, 43,000 to 174,000 new clients are as a result of the Project.

(ii) Project Activity Indicators. The M&E Plan will contain Project Activity Indicators which will measure the results for the five main Projects and are listed below with their definitions and units of observation. Prior to the disbursement of MCC Funding for any Project Activity, the Implementing Entity of that Project Activity must propose a final set of Activity Indicators that is approved in writing by its Project Manager, MCA-Morocco and MCC. The M&E Plan will be amended to reflect the addition of such indicators.

Indicators	Definition	Unit of measurement	Baseline	Year 5
Project 1: Fruit Tree Productivity				
Total annual volume of production of dates and olives.	Total volume of production of olives and dates on farms benefiting from MCA Project rehabilitation activities.	000 metric tons (MT).	Rain-fed: 50.4; PMH: 28.4; Oasis: 13.7.	Increase over baseline: Rain-fed: 45%; PMH: 30.2%; Oasis: 26.7%.
Total annual value of production of dates and olives.	Total value of production of olives and dates at the farm gate on farms benefiting from MCA Project rehabilitation activities.	Millions US$	Rain-fed: 20.75; PMH: 12.1; Oasis: 5.36.	Increase over baseline: Rain-fed: 45%; PMH: 30.2%; Oasis: 26.7%.
Rain-fed Olive, Almond and Fig Tree Intensification and Expansion				
Cropped area covered by olive trees.	Share of per farm cropped area targeted by the project that is covered by olive trees as a percentage of SAU, on farms benefiting from MCA Project.	%	24	37.
Survival rate of newly planted olive trees after 2 years project-supported establishment period.	Number of olive trees alive as a share of total number planted under MCA project.	%	N/A	95.
Yield of rehabilitated olive trees.	Yield of rehabilitated olive trees on farms benefiting from MCA Project.	MT/ha	1.11	1.44.
Olive Tree Irrigation and Intensification				
Cropped area covered by olive trees.	Share of per farm cropped area targeted by the project that is covered by olive trees as a percentage of SAU, on farms benefiting from MCA Project.	%	50	66.
Yield of rehabilitated olive trees.	Yield of rehabilitated olive trees on farms benefiting from MCA project.	MT/ha	1.96	2.94.
Date Tree Irrigation and Intensification				
Cropped area covered by date trees.	Share of per farm cropped area targeted by the project that is covered by date trees as a percentage of SAU, on farms benefiting from MCA Project.	%	56	76.

Indicators	Definition	Unit of measurement	Baseline	Year 5
Yield of rehabilitated date palms.	Yield of rehabilitated date palms, by tree and unit area.	MT/ha	1.69	2.17.
Project II: Small-Scale Fisheries				
State of fish stock	State of the fish stock fished for a basket of fish species by zone and scored according to the following categories: Underutilized, fully utilized, over-fished or recovering.	Scale rating for a basket of fish species from under-utilized to recovering.	[4] TBD	Fish stock not fished beyond fully utilized.
Domestic fish consumption level.	Average annual per capita consumption.[5]	kg/person/year	12	14.
Development of Fish Landing Sites and Port Facilities				
Fisherman net revenue.	Average annual net revenue for fishermen accessing PDA facilities benefiting from MCA Project.	US$/fisherman/year.	3,887	Increase 30% over baseline.
Average fisherman sales price at PDA.	Average sales price received by small scale fisherman at PDA for a basket of fish.[5]	MAD/kg	37.57	Increase 19% over baseline.
Development of Wholesale Fish Markets				
Volume sold at wholesale markets.	Total volume of fish sold among 6 wholesale markets targeted for MCA investment.	MT	66,446	Increase 35% over the baseline value.
Fish sale price	Average sale price at 6 wholesale markets targeted for MCA investment for an established basket of fish species.[5]	MAD/kg	7	Increase 5% over the baseline value.
Support to Mobile Fish Vendors				
Average sales price	Average sale price of fish sold to a consumer for a representative basket of fish.[6]	MAD/kg	5	Increase 15% over baseline.
Volume of sales among mobile fish vendors.	Average daily volume of fish sold	kg/day	240	Increase 10% over baseline.
Project III: Artisan and Fez Medina				
Average revenue of potters receiving Artisan Production Activity (Marrakech & Fez).	Average revenue of potters	US$/year	5,238	Increase of 15% over baseline.
Employment and wages among Project graduates.	OFPPT trainees' income wages, employment levels.	US$ and %	TBD after collection of baseline data	TBD after collection of baseline data.
Tourist arrivals	Annual number of tourists arriving to city of Fez.	Tourists	350,000	Increase of 67% over the baseline value.
Artisan profits (artisans engaged in product finishing and points of sale).	To be defined upon completion of design competitions.	US$/year	TBD after design competition award	TBD after design competition award.
Employment created.	Number of person days of employment created.	person days	TBD after design competition award	TBD after design competition award.
SME value added	Value added of firms targeted for promotional support.	US$	TBD after targeted firms are identified	TBD after targeted firms are identified.

Indicators	Definition	Unit of measurement	Baseline	Year 5
Project IV: Financial Services				
Gross loan portfolio outstanding of microcredit associations (AMCs).	All outstanding principal for all outstanding client loans, including current, delinquent and restructured loans, but not loans that have been written off. It does not include interest receivable. It does not include employee loans.[7]	US$	411,764,706	1,176,470,588
Portfolio at risk > 30 days ratio.	Portfolio at Risk > 30 days/Gross Loan Portfolio for all active AMCs.	%	1.5	1
Operating Expense Ratio	Expenses related to operations, such as all personnel expenses, rent and utilities, transportation, office supplies, and depreciation/average loan portfolio outstanding for all active AMCs.	%	20	17
Project V: Enterprise Support				
Average annual sales of participating businesses.	Average annual sales per full-time-equivalent.	US$	TBD after collection of baseline data	Increase of US$588 in 2007 prices as compared to a control group.[8]
Survival rate of participating businesses.	Survival rate of SMEs receiving training.	%	TBD after collection of baseline data	Increase of 10% as compared to a control group.[9]

[4] Fish species to compose basket and accompanying values for baseline stock assessments will be calculated before Project Activities begin.
[5] Fish consumption will be measured in areas served by wholesale markets benefiting from MCA investments.
[6] Basket of fish to be determined before EIF.
[7] Target assumes a natural growth rate of 30 percent in number of clients.
[8] The methodology should be difference in difference: The difference in the mean increase in sales comparing treatment group verses control group should be greater than US$588 (5,000 MAD) at 2007 prices. This mean difference should be statistically significant at the ten percent level, and the official Moroccan consumer price index should be used to deflate values in prices of future years to 2007 prices.
[9] Example: 70 percent of firms in the treatment group survive to the end of year 2 and 60 percent of firms in the control group survive to the end of year 2. Since 70 is 16.6 percent higher than 60, the 10 percent criteria is satisfied.

(b) Data Collection and Reporting: The M&E Plan will establish guidelines for data collection and a reporting framework, including a schedule of MCC's Program reporting requirements and an identification of responsible parties. Compliance with data collection and reporting timelines will be conditions for disbursements for the relevant Project Activities as set forth in the Program Implementation Agreement. The M&E Plan will specify the data collection methodologies, procedures, and analysis required for reporting on results at all levels. The M&E Plan will also establish one method for measuring and calculating beneficiary income across all projects, in addition to describing any interim MCC approvals for data collection, analysis, and reporting plans.

(c) Data Quality Reviews: As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection.

(d) Management Information System: The M&E plan will describe the information system that will be used to collect data, store, process and deliver information to relevant stakeholders in such a way that the Program information collected and verified pursuant to the M&E Plan is at all times accessible and useful to those who wish to use it. The system development will take into consideration the requirement and data needs of the components of the Program, and will be aligned with MCC existing systems, other service providers, and government ministries.

(e) Role of MCA-Morocco. The monitoring and evaluation of this Compact spans across five discrete Projects and will involve a variety of governmental, non-governmental, and private sector institutions. MCA-Morocco holds full responsibility for implementation of the M&E Plan. MCA-Morocco will oversee all Compact-related monitoring and evaluation activities conducted by each of the Projects, ensuring that data from all implementing entities is consistent, and accurately reported and aggregated into regular Compact performance reports as described in the M&E Plan.

4. Evaluation Component

The Evaluation Component of the M&E plan will contain three types of evaluations: Impact Evaluations, Project Performance Evaluations, and Special Studies. Plans for each type of evaluation will be finalized before MCC Disbursement or re-disbursement of an MCC Disbursement for specific Program or Project activities. The Evaluation Component of the M&E Plan will describe the purpose of the evaluation, methodology, timeline, required MCC approvals, as well as the process for collection and analysis of data for each evaluation. The results of all evaluations will be made publicly available in accordance with MCC M&E Guidelines.

(a) Impact Evaluation: The M&E plan will include a description of the methods to be used for impact evaluations and plans for integrating the evaluation method into project design. Based on in-country consultation with stakeholders, the following strategies

outlined below were jointly determined as having the strongest potential for rigorous impact evaluation. The M&E plan will further outline in detail these methodologies. Final impact evaluation strategies are to be jointly determined before the approval of the M&E plan and before entry into force of this Compact. The following are a summary of the potential impact evaluation methodologies:

(i) Enterprise Support Project: The pilot phase of the Enterprise Support Project will be assessed through an impact evaluation using randomized treatment and control groups. The pilot program will include business training for approximately 600 small businesses and a control group of approximately equal size (as determined by the evaluation design). Results will be used to decide whether or not to expand Project activities in Year 3 of the Compact Term. The impact of training and technical support will be assessed based on the enterprise support economic rate of return model agreed by the Parties. For each pilot program assessed, a minimum sample size will be established by the impact evaluation design before the pilot begins. Once data is available from the minimum sample of firms, or at the mid-term review, whichever comes first, such data will be used to calculate the economic rate of return using the model to be included as part of the M&E Plan. A pilot program will be scaled up only if the economic rate of return from the model is above 15 percent and the results are statistically significant at the ten percent level.

(ii) Technical Assistance and Training for Fruit Tree Producers: The purpose of the impact evaluation is to evaluate the effectiveness of technical assistance and the extension methods used in the Project. The evaluation would focus on rehabilitation activities under the Project to refine the effectiveness of technical assistance which will be based from the outset on best practices.

(iii) Improvement of Operating Efficiency and Transparency in the Financial Services Sector: There are two potential evaluation designs under consideration for the Financial Services Project. The first evaluation would assess technologies funded through the Support to Innovative Technologies Activity. The purpose of the evaluation is to learn which of the technologies funded through the grant facility is most effective for lowering operating costs and expanding access to credit. The facility would structure awards so that technology programs could be evaluated using credible control or comparison groups. As such, the grant facility would require that microfinance associations receiving grants participate in the evaluation of the technology proposed. A second evaluation under consideration would assess the extent to which mobile branches funded through this Compact are effective in expanding access to credit as compared to fixed branches or other methods.

(iv) New Financial Product Development: If the financial sector transformation activities allow, the Financial Services Project will develop an evaluation of the new products available to micro-enterprises. This impact evaluation could provide additional information on how best to market the new products to institution clients and identify which products are most effective at improving household income.

The M&E plan also will specify different modes of contracting to carry out the evaluations, including independent and specialized contractors and agreements where necessary.

(b) Project Performance Evaluations. The M&E Plan will make provision for project level evaluations. MCA-Morocco, with the prior written approval of MCC, will engage independent evaluators to design the Project Performance Evaluations to be conducted at the midpoint and at the end of each Project. Or, at MCC's election, MCC will engage the independent evaluators. The Project Performance Evaluations must at a minimum (i) evaluate the efficiency and effectiveness of the Project Activities; (ii) estimate, quantitatively and in a statistically valid way, the causal relationship between the expected impact (to the extent possible), the intended outcomes and outputs; (iii) determine if and analyze the reasons why this Compact Goal, Program Objectives and Project Objectives were or were not achieved; (iv) identify positive and negative unintended results of the Program; (v) provide lessons learned that may be applied to similar projects; (vi) assess the likelihood that results will be sustained over time; and (vii) any other guidance and direction that will be provided in the M&E Plan. To the extent engaged by MCA-Morocco, such an independent evaluator will review the plans for the collection of baseline data and, as applicable, plans for selecting comparison groups.

(c) Special Studies. The M&E plan will include a description of the methods to be used for Special Studies funded through this Compact or by MCC. Based on in-country consultations, the following Special Studies should provide crucial information in evaluating the success of the Financial Services Project:

(i) Assessment of the Microcredit Sector: A reporting system will be established to inform the extent to which lending by microcredit institutions to clients is higher with Jaida than in its absence. This will entail recording baseline data going back several years before entry into force of this Compact and updating this data throughout implementation of the Program. Data is likely to include information on the key assets and liabilities of microcredit associations as well as the distribution of funding sources. Details of this reporting system will be agreed to by the Parties.

(ii) Assessment of Return to Investments Made with Microcredit: A small panel survey will be conducted at regular intervals to estimate the economic returns that microcredit clients are earning on their loans. Details of this tracking survey will be agreed to by the Parties before entry into force of this Compact.

Plans for conducting the Special Studies described above will be determined jointly between MCA-Morocco and MCC before the approval of the M&E plan and before entry into force of this Compact. The M&E plan will identify and make provision for any other special studies, ad hoc evaluations, and research that may be needed as part of the monitoring and evaluating of this Compact. Either MCC or MCA-Morocco may request special studies or ad hoc evaluations of Projects, Project Activities, or the Program as a whole prior to the expiration of the Compact Term. When MCA-Morocco engages the evaluator, the evaluator will be an externally contracted and independently source selected by MCA-Morocco. The aforementioned engagement will be subject to the prior written approval of MCC, following a tender in accordance with the MCC Program Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter or supplemental agreement. Contract terms for all evaluations will prevent project implementers from biasing results or inhibiting the publication of results. MCC will approve terms of reference, selection of evaluation panels, data collection plans, and evaluation implementation plans.

(d) Request for Ad Hoc Evaluation or Special Study: If MCA-Morocco requires an ad hoc independent evaluation or special study at the request of the Government of Morocco for any reason, including for the purpose of contesting an MCC determination with respect to a

Project or Project Activity or to seek funding from other donors, no MCC Funding or MCA-Morocco resources may be applied to such evaluation or special study without MCC's prior written approval.

5. Other Components of the M&E Plan

In addition to the Monitoring and Evaluation Components, the M&E Plan will include the following components for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumptions and risks external to the Program that underlie the accomplishment of the Objectives and Project Activity Outcomes. However, such assumptions and risks will not excuse Parties' performance unless otherwise expressly agreed to in writing by all Parties.

6. Implementation of the M&E Plan

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with this M&E Annex, PIA, and any other relevant supplemental agreement.

(b) Modifications. Notwithstanding anything to the contrary in this Compact, including the requirements of this M&E Annex, MCC and the Government (or a mutually acceptable Government affiliate or permitted designee) may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending this Compact; provided, any such modification or amendment of the M&E Plan has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact and any relevant supplemental agreement between the Parties.

[FR Doc. E7–18265 Filed 9–14–07; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 13, 2007, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on September 11, 2007 to: Rachael Morgan-Kiss, Permit No. 2008–005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E7–18125 Filed 9–14–07; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a Partially Opened Meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) will hold a meeting on Thursday, September 20, 2007, from 9 a.m. to 3:30 p.m. The meeting will be closed to the public from 9 a.m. to 12 p.m. and opened to the public from 1 p.m. to 3:30 p.m.

DATES: The meeting is scheduled for September 20, 2007, unless otherwise notified.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230, Room 3407.

FOR FURTHER INFORMATION CONTACT: Laura Hellstern, DFO for ITAC–11 at (202) 482–3222, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be considered.

- *Export Financing Issues.* Information on what type of loans, how many loans and what dollar amount in loans are made to small/minority businesses vs. large businesses in the U.S. by Ex-Im Bank through the Small Business Administration.
- *Americas Competitiveness Forum.* An update on the accomplishments made by the Americas Competitiveness Forum, which was held in Atlanta in June 2007. A projection on what plans are being made for a follow up to the forum in 2008.
- *Update on Programs Offered by the U.S. and Foreign Commercial Service.* A briefing and update on programs and services that are available to small and minority businesses through the U.S. and Foreign Commercial Service.

Tiffany M. Moore,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. E7–18301 Filed 9–14–07; 8:45 am]

BILLING CODE 3190–W7–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Opportunity To Apply for Nominations to the World Trade Organization Dispute Settlement Indicative List of Potential Panelists

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to apply for nomination by the United States to the indicative list of non-governmental potential panelists provided for in Article 8.4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (''DSU'') and in the Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services (''GATS'') of the World Trade Organization (''WTO'').

SUMMARY: The Office of the United States Trade Representative is seeking to update the current list of U.S. non-governmental individuals on the indicative list of potential panelists maintained by the WTO Secretariat, as provided for in Article 8.4 of the DSU. The DSU provides a mechanism for the settlement of disputes between the Members of the WTO. A three-person panel conducts each dispute settlement proceeding and issues a report for consideration by the Dispute Settlement Body (''DSB''). The indicative list assists in selecting panelists for dispute settlement proceedings; panelists often are drawn from the indicative list, although there is no requirement to do so. Article 8.4 of the DSU also provides for periodically updating the indicative list. Section 123(b) of the Uruguay Round Agreement Act (''URAA''), Public Law 103–405, provides that the Trade Representative shall seek to ensure that persons appointed to the WTO indicative list are well-qualified and that the indicative list includes persons with expertise in all of the subject matters covered by the Uruguay Round Agreements. USTR invites

citizens of the United States with appropriate qualifications, discussed below, to apply for consideration as a nominee to the indicative list.

DATES: Eligible citizens are encouraged to apply by October 19, 2007 to be considered for nomination to the list in 2007.

FOR FURTHER INFORMATION CONTACT: For information contact Sandy McKinzy, Litigation Assistant, USTR Office of Monitoring and Enforcement, (202) 395–3582. Further information on the indicative list is available on the WTO Web site at *http://www.wto.org* in a document designated WT/DSB/33.

SUPPLEMENTARY INFORMATION: Pursuant to Article 8.4 of the DSU, the WTO Secretariat maintains an indicative list of well-qualified governmental and non-governmental individuals, including persons who have served on or presented a case to a panel, taught or published on international trade law or policy, served as a senior trade policy official of a WTO member country, or served in the WTO Secretariat. The indicative list is used to assist in the selection of panelists for dispute settlement proceedings. Panel members are to be selected with a view to ensuring a sufficiently diverse background and a wide spectrum of experience.

The current list dates principally from 2003 (with the addition of some persons nominated later and approved by the DSB). In addition to being available on the WTO Web site, the list is also reproduced in the USTR Annual Report, available on the USTR Web site at *http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_Trade_Policy_Agenda.*

The indicative list includes a special roster of those with expertise in particular service sectors, pursuant to the Decision on Certain Dispute Settlement Procedures for the GATS (S/L/2 of 4 April 1995). GATS disputes could involve, *inter alia*, one or more of the following eleven principal sectors: (1) Business services, including professional and related services, (for example, legal, accounting, auditing and bookkeeping, taxation, medical, dental, veterinary, engineering, architectural, and urban planning services), computer and related services, research and development services, real estate services, rental and leasing services, and advertising and management services; (2) communication services (including audio-visual services); (3) construction and related engineering services; (4) distribution services; (5) educational services; (6) environmental services; (7) financial services, including insurance and insurance-related services, banking and securities services; (8) health related and social services; (9) tourism and travel-related services; (10) recreational, cultural and sporting services, and (11) transport services. Panels for GATS disputes are to be composed of well-qualified governmental and/or non-governmental individuals who have experience in issues related to GATS and/or trade in services, including associated regulatory matters. Dispute settlement panels concerning sectoral matters under the GATS must have expertise relevant to the specific service sector to which the dispute relates. The GATS Annex on Financial Services further provides that panels for disputes on prudential issues and other financial matters must have the necessary expertise relevant to the specific financial service under dispute.

USTR currently seeks applications related to the list of non-governmental individuals. Persons selected by USTR will be nominated for inclusion on the WTO indicative list subject to DSB approval. Inclusion of a name on the list, however, does not necessarily mean that the individual will be selected for service on a panel. DSU Article 8.2 provides that citizens of WTO Members who are parties or interested third parties to a dispute may not serve on the panel in that dispute unless the parties agree otherwise. For example, panels for disputes in which the United States is a party or interested third party cannot include any U.S. citizens unless the parties to the dispute agree otherwise. Since the United States is a party or third party to almost every dispute, very few U.S. citizens have served as panelists.

Functions of Panels

WTO dispute settlement panels consist of three persons (unless the parties agree to have five panelists) whose function is to make an objective assessment of the matter under dispute, including an objective assessment of the facts of the case, the applicability of the relevant WTO agreements and the conformity of the measure under consideration with the obligations of those agreements. In addition, panels are to make such other findings as will assist the DSB in making the recommendations provided for in the WTO agreements. Panelists must act in strict conformity with the provisions of the WTO agreements, including application of the appropriate standard of review. Panels are responsible for providing a report to the DSB, including recommendations if necessary, on the conformity of the matter under dispute with WTO obligations. Panelists must also comply with the WTO Rules of Conduct (available at *http://www.wto.org* in a document designated WT/DSB/RC/1) relating to conflicts of interest and conduct as a panelist.

Procedures for Application

Non-governmental U.S. citizens (i.e., individuals not currently employed fulltime by the U.S. Federal government or a state or local government) meeting the qualifications of Article 8 of the DSU and possessing expertise in international trade in goods, services, intellectual property rights or other matters covered by the WTO agreements are invited to file an application for nomination to the WTO list. Applications must be submitted (i) Electronically, to *FR0719@ustr.eop.gov*, with ''Indicative List Application'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

Applicants are to provide the following information to the extent applicable, and should bear in mind the information on the ''Summary Curriculum Vitae for Persons Proposed for the Indicative List'' at the end of the document designated WTO/DSB/33:

1. Name of the applicant;
2. Business address, telephone number and, if available, fax number and e-mail address;
3. Citizenship(s);
4. Foreign language fluency, spoken and written;
5. Current employment, including title, description of responsibilities, and name and address of employer;
6. Relevant education and professional training, including particular service-sector expertise, if any;
7. Post-education employment history, including the dates and address of each prior position and a summary of responsibilities;
8. Relevant professional affiliations and certifications;
9. List of publications and speeches; teaching experience in the area of trade; also, one copy of any speeches and publications relevant to the subject matter of the WTO agreements or service sector;
10. List of international trade proceedings or domestic proceedings relating to international trade (WTO) matters in which the person has provided advice or otherwise participated, including judicial or administrative proceedings over which that person has presided;

11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods;

12. Names, addresses, telephone and, if available, email addresses of three individuals authorized to provide information to USTR concerning the applicant's qualifications for service, including the applicant's familiarity with international trade laws and other areas of expertise, character, reliability and judgment; and

13. A short statement of qualifications in light of Article 8.1 of the DSU, including information relevant to the applicant's familiarity with international trade, services or other issues covered by the WTO agreements, and availability for service.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Information provided by applicants will be used by USTR for the purpose of selecting candidates for nomination to the WTO list. Further information concerning potential conflicts may be requested from individuals and the possibility of significant conflicts will be taken into consideration in evaluating applicants.

U.S. citizens who are current members of the WTO list and are interested in continuing to serve on the list need not reapply in response to this notice. Individuals who have previously applied but have not been selected for nomination may reapply. USTR will contact applicants that qualify for further consideration as nominees regarding any additional information that may be required.

This notice contains a collection of information provision subject to the Paperwork Reduction Act (PRA) which has been approved by OMB. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish to voluntarily apply for nomination to the WTO list. It is expected that the collection of information burden will be under 3 hours. This is a one-time-only collection of information, and contains no annual reporting and recordkeeping burden. This collection of information was approved by OMB under OMB Control Number 0350–0014. Send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). Provision of the information requested above is voluntary; however, failure to provide the information will preclude consideration of the applicant as a candidate for the WTO list. The information may be disclosed to government officials, including members of the TPSC Subcommittee on Monitoring and Enforcement, for the purpose of evaluation of applications. Information on nominees will be furnished to the WTO pursuant to requirements under the DSU.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 07–4597 Filed 9–14–07; 8:45 am]

BILLING CODE 3190–W7–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program: Medically Underserved Areas for 2008

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 2008.

SUMMARY: The Office of Personnel Management (OPM) has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 2008. This is necessary to comply with a provision of the FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 2008, OPM's calculations show that the following states are Medically Underserved Areas under the FEHB Program: Alabama, Arizona, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, South Carolina, South Dakota, and Wyoming. For the 2008 calendar year Texas and West Virginia are being removed from the list, and no new states have been added.

DATES: *Effective Date:* January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Ingrid Burford, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. The FEHB law also requires that a State be designated as a Medically Underserved Area if 25 percent or more of the population lives in an area designated by the Department of Health and Human Services (HHS) as a primary medical care manpower shortage area. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires non-HMO FEHB plans to reimburse beneficiaries, subject to their contract terms, for covered services obtained from any licensed provider in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest HHS State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident populations.

U.S. Office of Personnel Management.

Howard C. Weizmann,

Deputy Director.

[FR Doc. E7–18215 Filed 9–14–07; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56378; File No. SR–CBOE–2006–90]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto to Trade Delayed Start Option Series

September 10, 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 November

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

7, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. On September 5, 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 amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce for trading a new type of option, called Delayed Start Option Series™ (''DSO''). CBOE proposes to be able to list a DSO™ on any security index option that is already approved for trading on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently lists and trades standardized options. Options are standardized in that at the inception of trading, the terms of the option contracts are typically uniform and fixed, such as the expiration date, the exercise style (American or European), strike price, settlement feature (cash vs. physical), etc.[4] The Exchange proposes to introduce for trading a new type of security index option product called Delayed Start Option Series (''DSOs''). DSOs will possess all of the characteristics of existing index options with one variation: At the commencement of trading of a particular DSO, and until a predetermined date (the ''strike setting date''), there will be no set exercise price. Instead, prior to the opening of the particular DSO series, a pre-established methodology will be applied to determine the strike price of the DSO. In addition, prior to the opening of the particular DSO series, the Exchange will fix the expiration date of the DSO and the date on which the exercise price will be established (the strike setting date). The methodology, as well as the purpose of DSOs, is described in greater detail below.

Volatility. The DSO is designed primarily to allow customers to manage risk associated with the volatility of a particular security index. Volatility is one of the most important determinants of an option's price, because any change in the volatility of a security will consequently change the price of a standard index option contract. Consequently, any time an investor takes a position in a standard index option contract, that investor will necessarily be exposed to the volatility of the level (or calculated value) of the underlying security or security index.

The effect of a change in volatility on the price of an option contract is quantified by what is referred to as an option's *vega* (or volatility exposure). *Vega* is derived from the formula used to price options and is itself dependent on factors that contribute to an option's price. The two major determinants of an index option's *vega* are the relationship between an option's strike price and the level of the underlying index and the amount of time left until the option matures.

DSOs have been designed to address the dependence of an index option's *vega* on the relationship between the option's strike price and the underlying index level. Generally, an at-the-money option has the highest *vega* because an at-the-money option has the greatest uncertainty as to whether it will expire in- or out-of-the-money. DSOs will be useful tools to manage volatility risk because prior to the strike setting date, the DSO's price will be most sensitive to changes in implied volatility, and changes in the index level will have less impact on a DSO's price. The introduction of DSOs will provide members and investors with an exchange-traded product to assist them in managing the risks associated with changes in volatility. CBOE believes that providing a standardized contract with transparent markets and the guarantee of a clearinghouse (*i.e.*, The Options Clearing Corporation (''OCC'')) will benefit investors.

Product Description. DSOs will be identical to other options series that currently trade except that instead of specifying a specific index value number for the exercise price, the exercise price will be specified in terms of a specific method for fixing such a number. This method will provide that the strike price is fixed based on the closing value of the underlying index on a predetermined strike setting date prior to expiration. The particular strike setting date will be specified at the time the DSO is initially opened for trading and will be no sooner than one month, and no later than twelve months, after the series' opening. The particular expiration date will also be specified at the time the DSO is initially opened for trading and will be no later than what is currently permitted under CBOE rules.[5]

Initially, CBOE will establish the strike setting dates for all series of DSOs at three months prior to the option's expiration date. Each DSO series that is issued as such will trade without an exercise price until three months prior to expiration, at which point the option's exercise price will be fixed based on the underlying index's closing price. After the strike setting date, and up until the expiration date, the DSO will trade the same as any other option in the same index class.

The Exchange may determine to issue series of DSOs with more or less time than three months between the strike setting date and expiration date. As indicated above, the particular strike setting date and the expiration date, and thus the corresponding length of the interval between the strike setting date and expiration, will be set prior to issuance of each particular series. No changes to any terms of existing DSO series will be made once the series commences trading.

There are two primary reasons for varying the length of time between the strike setting date and expiration. First, the volatility implied by an option's price varies mainly with strike price and time to expiration. The volatility implied by an option with four months to expiration can be different than that implied by an option with three months to expiration. Second, not only does the implied volatility vary with strike price and time to expiration but changes in the level of implied volatility also vary with strike price and time to expiration. For example, the implied volatility of a

[3] Amendment No. 1 replaces the original filing in its entirety.

[4] *Cf.* Flex Options, which allow parties to designate certain terms of the transaction.

[5] Presently, the longest term for an option series expiration is thirty-nine months from the listing date. *See* Rule 5.8(a) and proposed Rule 24.9(d)(2).

one-month at-the-money call option could change without a corresponding change in the implied volatility of a three-month at-the-money call option. This has implications for the usefulness of DSOs in hedging the risk of changes in implied volatility.

To illustrate, if an investor has a long position in three-month, non-DSO, at-the-money options and wishes to hedge against changes in implied volatility, a DSO with one month between the strike setting date and the expiration date would not always provide a useful hedge. A DSO with three months between the strike setting and expiration dates, would primarily be sensitive to changes in the implied volatility of a three-month option, however, which allows the investor to more precisely achieve the desired hedge.

Establishment of Strike Price. On the strike setting date, the DSO is assigned an at-the-money, in-the-money or out-of-the-money strike price. A DSO's exercise price will be fixed based on the closing value of the underlying index on the strike setting date, rounded to the nearest one-eighth (.125) value, or such smaller value as the Exchange may designate at the time the DSO is listed, provided that the value cannot be smaller than 0.01.[6] For example, using a one-eighth interval, if the SPX closes at 1004.12 on the strike setting date, the DSO would be assigned a strike price of 1004.125. After the strike setting date, the DSO will trade the same as other options until expiration. As discussed above, at-the-money options generally have the greatest sensitivity to changes in implied volatility. DSOs will be useful to manage volatility risk because, prior to the strike setting date, the DSO's price will be most sensitive to changes in implied volatility. Because these DSOs are always ''at-the-money'' prior to the strike setting date, changes in the index level will have less impact on an at-the-money DSO's price.

The Exchange also plans to list in- or out-of-the money DSOs. These types of DSOs would trade in the exact same manner as at-the-money DSOs, except that the strike price would be set to a predetermined level either in- or out-of-the-money on the strike setting date (*e.g.*, 5% in-the-money, 5% out-of-the-money). For example, if the Exchange determines to list a 5% out-of-the-money DSO on the S&P 500® Index (''SPX'') and the SPX closes at 1000 on the strike setting date, the strike price would be established at 1050. The amount by which the strike price of an in- or out-of-the money DSO series will be set in- or out-of-the-money on the strike setting date will be announced prior to the inception of trading of that particular series and will not change thereafter.

There are two purposes for listing strike prices that are in- or out-of-the-money. First, DSOs may be useful to investment managers who follow covered call writing programs. These managers typically sell out-of-the-money call options. Therefore, out-of-the-money DSOs would be of more interest to them. Second, implied volatility and changes in implied volatility vary by strike price. Therefore, market participants may desire the ability to trade the volatility exposure of an index option that is not at-the-money because it may better match these participants' volatility exposure.

Exercise Style. All DSOs will feature European-exercise style until the strike setting date (*i.e.*, the option contract cannot be exercised during this period). After the strike setting date, the DSO will be subject to the exercise style (*e.g.*, American or European) of the particular index option class. Most index options, including the SPX, DJX, XEO, and NDX,[7] already feature European-style exercise. OEX options feature American-style exercise.[8] Accordingly, on the strike setting date, DSOs on the OEX will be subject to an American-style exercise. This is reflected in newly proposed Rule 24.9(d)(1). The period during which exercise is restricted will depend upon the particular DSO's strike setting date, expiration date and expiration style. For instance, if a DSO that is subject to an American-style exercise is issued with a nine-month expiration and a strike setting date fixed at three-months prior to expiration, the period of non-exercise will be six months.[9]

Trading Increments, Margin, and Trading Symbols. The Exchange proposes to list DSO puts to correspond with each DSO call in a particular index option class. As with all other options, the premium quotation would be stated in decimals, and one point would equal $100. The minimum tick for options trading below $3.00 would be 0.05 ($5.00) and for all other series, 0.10 ($10.00).

DSOs in any particular index option class will be treated the same as any other options on the same index for the purpose of determining customer margin.[10] Therefore, a buyer of DSOs would have to pay the premium in full, while a seller will have to put up the entire premium, plus 15% of the underlying value for a broad-based index option, or the premium plus 20% for a narrow-based or micro narrow-based index option. Thus, for example, since an at-the-money DSO will always be at-the-money prior to the strike setting date, customer margin for the short will always be the premium plus 15% (20%) of the underlying value. Following the strike setting date, customer margin may be less than 15% (20%) of the underlying value based on the amount the option is out-of-the-money at that time.

Prior to the strike setting date, margin on any DSO will be based on the then-current level of the underlying index. For example, a DSO whose strike price will be set to be at-the-money will be margined as an at-the-money option in the same index option class prior to the strike setting date, because prior to the strike setting date the DSO's price will be directly related to the price of an at-the-money option. Prior to the strike setting date, in- and out-of-the-money DSOs will be margined the same as any other in- and out-of-the-money options in the same index option class.

Prior to the strike setting date, DSOs will be distinguished from existing options by a unique root symbol and a special strike price code designating an at-the-money, in-the-money or out-of-the-money option. The Exchange presently intends to trade the DSO series under separate symbols from

[6] Because of system limitations, the Exchange currently plans to round DSO exercise prices to the nearest .125. However, should the system functionality permit it in the future, the Exchange wants the flexibility to be able to determine to round DSO exercise prices to a smaller value, provided that the particular increment would be designated at the time the DSO is listed and that it would not be any smaller than 0.01.

[7] The following are the correlating underlying indexes for each listed option class: (1) Standard and Poor's 100 Stock Index (''XEO'') (European-style exercise); (2) Standard and Poor's 500 Stock Index (''SPX''); (3) Nasdaq 100 Stock Index (''NDX''); and (4) Dow Jones Industrial Average Index (''DJX'').

[8] CBOE lists both European- and American-style exercise options on the Standard & Poor's 100 Stock Index. European-style index options trade under the symbol XEO while American-style options trade under the symbol OEX. Except as noted otherwise, references in this filing to ''OEX'' include the XEO series.

[9] Similarly, a DSO that is subject to European-style exercise with a nine-month expiration and a strike setting date fixed at three months prior to expiration would have a nine-month period of non-exercisability. The strike setting interval would be made and publicly announced prior to inception of trading of that particular DSO series. No changes to any terms of existing DSO series will be made once the series trades (with the exception of the establishment of the exercise price).

[10] *See* Rule 12.3. However, the Exchange does not initially plan to permit spread margining between DSO and non-DSO options for the time period between the initial listing of a DSO and its strike setting date. The Exchange intends to consider what spread margin would be appropriate and address the subject under a separate rule filing.

other option series on the same index option class. The Exchange notes that this is identical to how options on the SPX traded when the Exchange began listing both a.m.- and p.m.-settled SPX option series.[11] The exact exercise price, and a unique DSO strike price code, will be fixed on the strike setting date pursuant to the method established at the time the option series was originally opened for trading. The strike price code will specify the exact strike price of the particular DSO option series (rounded to the nearest eighth or smaller increment, if applicable).

Position and Exercise Limits. Positions in any DSO will be subject to the same rules governing position and exercise limits upon other options in the same index option class and, for the purposes of determining position limits, DSO positions will be aggregated with positions in other series of the same option class.[12] Similarly, members and member organizations trading in DSOs will continue to be subject to the same reporting requirements and margin and clearing firm requirements as provided under Interpretation and Policy .03 and .04 to Rule 24.4.

Pricing of a DSO. Similar to other index options, the pricing of an at-the-money DSO reflects the price of the underlying index, implied volatility, interest rates, time to expiration, and strike price. Variations of the same pricing formulas apply to the pricing of in- and out-of-the money DSOs. Pricing formulas, which have been available for over a decade, reflect this methodology. In fact, the relevant pricing formulas that we anticipate market participants will use to assist in their trading generally are derived from the original Black-Scholes pricing formula to account for the time between the start of the contract and when the strike price is set.[13]

Therefore, the price for a DSO will generally approximate the concurrent price for a similar option, with one significant deviation: Whereas other options are priced based on current levels of implied volatility, a DSO is priced using an expectation of implied volatility levels at the time the strike price is set, which is generally derived from the current level of implied volatility. The dependence of a particular DSO's price on expected implied volatility is what makes a DSO useful to market participants that are interested in volatility trading.

Customer Suitability. Although DSOs may be suitable for all types of investors, the Exchange is adopting a rule that limits the trading of DSOs to investors with prior options trading experience. Also, prior to the commencement of trading of DSOs, the Exchange will make available on its Web site all information necessary to inform members and customers of the addition of new DSO series to a particular option class. This information will highlight the differences in exercise methodology of DSOs, identify the new symbols for the DSO series, indicate the investor restrictions, identify the initial expiration months and strike prices available for trading, and reference the particular CBOE Rules that govern DSO trading. The Exchange also will make available on its Web site the DSO product specifications, trading characteristics, and any other information that will describe the operation of DSO products.

Applicability of Rule 9b–1. The Exchange asks the Commission to clarify that DSOs are standardized options under Rule 9b–1 of the Act. Subsection (a)(4) of Rule 9b–1 defines ''standardized options'' as ''options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.'' DSOs are like existing options trading on CBOE in every respect except for the determination of the exercise price. DSOs (1) trade on a national securities exchange, (2) have a specific exercise date, (3) have fixed terms, (4) have specific exercise style, and (5) will be issued and cleared by OCC. All of these are attributes of ''standardized options'' as defined in Rule 9b–1. The one respect with which DSOs differ from existing options is that the existing options have a fixed exercise price at the commencement of trading while DSOs have a formula set at the commencement of trading for fixing the exercise price. A DSO has a specific exercise price because the exercise price is established at the commencement of trading according to a formula that is publicly known and announced, objectively determined, and unalterable. A party entering into a DSO knows exactly the option's exercise price formula, which is the value of the underlying index as of the close on the strike setting date.

Furthermore, the DSO is a single option contract. To illustrate, a DSO listed with six months to expiration and three months until the strike setting date is simply a single option contract with six months to expiration, for which the strike price is allowed to float for the first three months. There is no contract settlement on the strike setting date. As a result, a market participant with a short position in a DSO series is not obligated to make delivery of any underlying security or cash on the strike setting date. The strike setting date is only relevant to the contract as the date on which the pre-determined formula is applied to determine the strike price of the existing DSO series.

If the Commission cannot determine that DSOs are, by their terms, standardized options, then the Exchange requests that the Commission use its authority under Rule 9b–1(a)(4) to otherwise designate DSOs as standardized options. The Commission used this authority in 1993 to designate ''Flex Options'' as standardized options.[14] In making this designation, the Commission found that, ''[a]part from the flexibility with respect to strike prices, settlement, expiration dates, and exercise style, all of the other terms of Flex Options are standardized.'' The Commission observed that standardized terms include matters such as ''exercise procedures, contract adjustments, time of issuance, effect of closing transactions, restrictions on exercise under OCC rules [and] margin requirements * * *.'' The Commission also emphasized that Flex Options could be written in a way that would make them fully fungible with other options issued by OCC that fell within the framework of Rule 9b–1. DSOs share all of these characteristics and, in fact, are more standardized than Flex Options in that strike price, settlement, expiration dates, and exercise style are fixed by the Exchange for each DSO series.[15] The strike price is simply

[11] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving SR–CBOE–92–09).

[12] *See* CBOE Rules 4.11, 4.12, 24.4, 24.4A, and 24.4B. In addition, the Exchange is proposing to clarify in Rule 24.4B, Position Limits for Options on Micro Narrow-Based Indexes as Defined Under Rule 24.2(d), that position in Short Term Option Series and Quarterly Options, together with DSO positions, shall be aggregated with positions in options contracts in the same class.

[13] A derivation of the formula for valuing similar contracts appeared in RISK, February 1991. *See* Rubinstein, Mark, ''Pay Now, Choose Later,'' RISK, February 1991.

[14] *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993).

[15] The Commission has consistently cited the criteria outlined above when making Rule 9b–1 standardization determinations. *See, e.g.,* Securities Exchange Act Release Nos. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (Phlx Flexible Exchange Traded Equity and Index Options); 37336 (June 19, 1996), 61 FR 33558 (June 27, 1996) (Amex Flexible Exchange Options on Specified Equity Securities); 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (CBOE and PCX Flexible

Continued

specified by the Exchange in terms of a pre-established formula for fixing a set strike price on a pre-determined date. No changes to any terms of existing DSO series will be made once the series begins trading.

Advantages of Exchange Trading vs. *OTC Market.* It is the Exchange's understanding that products similar to DSOs currently trade in the OTC market. Most options pricing software available commercially and through derivatives Web sites include a pricing model for DSOs. The Exchange believes that exchange-listed DSOs will have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms and the support of a DPM, the trading crowd, or a CBOE Lead Market Maker (''LMM''), Exchange-listed contracts could develop substantial liquidity. Second, counter-party credit risk is mitigated by the fact that the contracts are issued and guaranteed by OCC. Finally, the price discovery and dissemination provided by the CBOE and its members will lead to more transparent markets. CBOE's ability to offer DSOs would aid it in competing with the OTC market and at the same time expand the universe of listed products available to interested market participants.

The Exchange represents that it will have surveillance procedures that are adequate to monitor trading activity in DSOs. In this respect, the Exchange intends to monitor trading activity in DSOs like any other option series listed in that same index option class.

2. Statutory Basis

The Exchange believes that the introduction of the new DSO series provides investors with a valuable hedging tool that will be traded on a listed exchange. For these reasons, the Exchange believes that the proposed rule change is consistent with section 6 of the Act [16] in general and, in particular, with section 6(b)(5) [17] in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–90 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–2006–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–90 and should be submitted on or before October 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–18216 Filed 9–14–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–56380; File No. SR–CBOE–2007–105]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Rules Pertaining to the Contract Multiplier for Credit Default Options

September 10, 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 7, 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 prepared substantially by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule

Exchange Traded Equity and Index Options); and 34203 (June 13, 1994), 59 FR 31658 (June 20, 1004) (CBOE Foreign Currency Flex Options, which incorporates by reference the findings of Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993)).

[16] 15 U.S.C. 78(f).

[17] 15 U.S.C. 78(f)(b)(5).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 rules pertaining to the applicable contract multiplier for Credit Default Options (''CDOs''). 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.

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 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 CDOs,[6] which are binary call options based on Credit Events[7] in one or more debt securities of an issuer or guarantor. If the Exchange confirms a Credit Event, a CDO would be subject to automatic exercise and a fixed cash settlement amount payment of $100,000 per contract. The $100,000 is equal to a fixed exercise settlement value of $100 multiplied by a fixed contract multiplier of 1,000.

The purpose of this rule change is to modify the rule provisions pertaining to CDO contract multipliers to permit the Exchange to vary the particular contract multiplier term on a class-by-class basis within a range of 1 to 1,000.[8] The exercise settlement value would remain fixed at $100. Thus, a given CDO class could have a cash settlement amount ranging from $100 per contract (equal to an exercise settlement value of $100 multiplied by a contract multiplier of 1) to $100,000 per contract (equal to an exercise settlement value of $100 multiplied by a contract multiplier of 1,000). Based on feedback from members and potential investors, the Exchange believes it is essential to have the ability to introduce CDOs where the contract payout is less than $100,000 in order to attract liquidity and to better service customer demands and needs.

In calculating the applicable position limits and reporting requirements, the Exchange is proposing that any ''reduced-value'' CDOs (*i.e.*, CDOs that have a cash settlement amount that is less than $100,000 per contract) would be aggregated with any equivalent full-value CDOs and counted by the amount by which they equal a full-value CDO contract.[9] For example, the Exchange might determine to list reduced-value CDOs based on a Failure-to-Pay Default of the Relevant Obligations of Issuer ABC using a contract multiplier of 100, in which case the reduced-value CDO would be subject to a $10,000 per contract payout upon confirmation of a Failure-to-Pay Default ($100 multiplied by 100, which is 1/10th the value of a full-value CDO). The applicable position limits and reporting requirements would be equivalent to the reduced-value contract factor multiplied by the applicable position limits for a full-value option on the same broad-based index. Using the example above, the position limits for the reduced-value CDOs (1/10th full-value) would be 50,000 contracts, which is equal to the applicable reduced-value factor (10) multiplied by the applicable position limit for a full-value CDO class (5,000 contracts).[10] Likewise, the hedge reporting requirements would be 10,000 contracts, which is equal to the applicable factor (10) multiplied by the applicable reporting level for a full-value CDO class (1,000 contracts).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,[11] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to 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

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 rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of such proposed rule change, the

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] CBOE gave the Commission written notice of its intent to file the proposed rule change on August 30, 2007.

[6] *See* Securities Exchange Act Release No. 55871 (June 6, 2007), 72 FR 32372 (June 12, 2007) (SR–CBOE–2006–84).

[7] A ''Credit Event'' occurs when an issuer or guarantor has a Failure-to-Pay Default on, any other Event of Default on, and/or a Restructuring of the Relevant Obligation(s). Failure-to-Pay Defaults, Events of Default, and Restructurings are defined in accordance with the terms of the Relevant Obligation(s) and are subject to certain minimum threshold amounts provided in Rule 29.1(c). The ''Relevant Obligations'' are the debt security obligation(s) of the issuer or guarantor that underlie a CDO. *See* Rules 29.1(c).

[8] *See* proposed change to Rule 29.1(a) and corresponding change to Rule 29.9(e).

[9] *See* proposed changes to Rules 29.5(a) and 29.6.

[10] As indicated above, positions in reduced-value CDOs would be aggregated with positions in equivalent full-value CDOs for purposes of calculating position limit and reporting requirements. For example, if a CDO is reduced by one-tenth, ten reduced-value CDO contracts would equal one full-value contract. If a CDO is reduced by one-fifth, five reduced-value CDO contracts would equal one full-value CDO contract.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

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–2007–105 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–2007–105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–105 and should be submitted on or before October 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–18217 Filed 9–14–07; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11019 and #11020]

Illinois Disaster #IL–00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1722–DR), dated 08/30/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/07/2007 through 08/08/2007.

Effective Date: 08/30/2007.

Physical Loan Application Deadline Date: 10/29/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 05/30/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/30/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Stephenson, Winnebago.

Contiguous Counties (Economic Injury Loans Only):

Illinois: Boone, Carroll, DeKalb, JoDaviess, Ogle.

Wisconsin: Green, Lafayette, Rock.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 110196 and for economic injury is 110200.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 07–4451 Filed 9–14–07; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11004 and #11005]

Minnesota Disaster Number MN–00011

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1717–DR), dated 08/23/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/18/2007 through 08/31/2007.

Effective Date: 09/04/2007.

Physical Loan Application Deadline Date: 10/22/2007.

EIDL Loan Application Deadline Date: 05/23/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Minnesota, dated 08/23/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Dodge.

All other counties contiguous to the above named primary county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 07–4453 Filed 9–14–07; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11004 and #11005]

Minnesota Disaster Number MN–00011

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1717–DR), dated 08/23/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/18/2007 and continuing through 08/31/2007.

Effective Date: 08/31/2007.

Physical Loan Application Deadline Date: 10/22/2007.

EIDL Loan Application Deadline Date: 05/23/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Minnesota, dated 08/23/2007 is hereby amended to establish the incident period for this disaster as beginning 08/18/2007 and continuing through 08/31/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 07–4454 Filed 9–14–07; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11023]

Nebraska Disaster #NE–00017

AGENCY: Small Business Administration

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster fro Public Assistance Only for the State of Nebraska (FEMA)–1721–DR), dated 08/29/2007.

Incident: Severe Storms and Flooding.

Incident Period: 06/11/2007 through 06/16/2007.

Effective Date: 08/29/2007.

Physical Loan Application Deadline Date: 10/29/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/29/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Arthur, Chase, Dundy, Keith, McPherson, Perkins.

The Interest rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11023.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 07–4452 Filed 9–14–07; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11021 and #11022]

New York Disaster #NY–00053

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1724–DR), dated 08/31/2007.

Incident: Severe Storms, Flooding and Tornado.

Incident Period: 08/08/2007.

Effective Date: 08/31/2007.

Physical Loan Application Deadline Date: 10/30/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 06/02/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/31/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Queens.

Contiguous Counties (Economic Injury Loans Only):

New York: Bronx, Kings, Nassau, New York.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11021B and for economic injury is 110220.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 07–4457 Filed 9–14–07; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11012 and #11013]

Ohio Disaster Number OH–00012

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the President declaration of a major disaster for the State of Ohio (FEMA–1720–Dr), dated 08/27/2007.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 08/20/2007 and continuing through 08/28/2007.

Effective Date: 08/28/2007.

Physical Loan Application Deadline Date: 10/26/2007.

EIDL Loan Application Deadline Date: 05/27/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Ohio, dated 08/27/2007 is hereby amended to establish the incident period for this disaster as beginning 08/20/2007 and continuing through 08/28/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 07–4456 Filed 9–14–07; 8:45 am]

BILLING CODE 8025–01–M

U.S. SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11012 and #11013]

OHIO Disaster Number OH–00012

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of OHIO (FEMA–1720–DR), dated 08/27/2007.

Incident: Severe Storms, Flooding, and Tornadoes

Incident Period: 08/20/2007 through 08/28/2007

EFFECTIVE DATE: 09/04/2007

Physical Loan Application Deadline Date: 10/26/2007.

EIDL Loan Application Deadline Date: 05/27/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of OHIO, dated 08/27/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Hardin, Seneca.

Contiguous Counties:

Ohio: Logan, Sandusky, Union.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 07–4459 Filed 9–14–07; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10927 and #10928]

Oklahoma Disaster Number OK–00012

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1712–DR), dated 07/07/2007.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/10/2007 through 07/25/2007.

Effective Date: 08/29/07.

Physical Loan Application Deadline Date: 10/05/07.

EIDL Loan Application Deadline Date: 04/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Oklahoma, dated 07/07/2007 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 10/05/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 07–4450 Filed 9–14–07; 8:45am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11024]

Oklahoma Disaster #OK–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1723–DR), dated 08/31/2007.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 05/24/2007 through 06/01/2007.

EFFECTIVE DATE: 08/31/2007.

Physical Loan Application Deadline Date: 10/30/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on 08/31/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Bryan, Comanche, Cotton, Logan, Pontotoc, Seminole, Stephens, Tillman.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11024.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 07–4458 Filed 9–14–07; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11010 and #11011]

Wisconsin Disaster Declaration Number WI–00010

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1719–DR), dated 08/26/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/18/2007 and continuing through 08/31/2007.

Effective Date: 08/31/2007.

Physical Loan Application Deadline Date: 10/25/2007.

EIDL Loan Application Deadline Date: 05/26/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Wisconsin, dated 08/26/2007 is hereby amended to establish the incident period for the disaster as beginning 08/18/2007 and continuing through 08/31/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 07–4455 Filed 9–14–07; 8:45am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 5937]

Culturally Significant Objects Imported for Exhibition Determinations: ''Martin Puryear''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Martin Puryear,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, NY, from on or about November 4, 2007, until on or about January 14, 2008; Modern Art Museum of Fort Worth, Fort Worth, TX, from on or about February 24, 2008, until on or about May 18, 2008; National Gallery of Art, Washington, DC, from on or about June 22, 2008, until on or about September 28, 2008; San Francisco Museum of Modern Art, San Francisco, CA, from on or about November 1, 2008, until on or about January 25, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 10, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–18258 Filed 9–14–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Teton County, WY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Change to August, 25, 2000 Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent (NOI) issued on August 25, 2000 has been modified. The August, 2000 NOI advised that an Environmental Impact Statement would be prepared in accordance with the National Environmental Policy Act for the proposed highway reconstruction in Teton County, Wyoming. The project limits were comprised of three segments and identified as beginning approximately 6.1 miles south of Jackson along U.S. highway 191/26/89/189 then running south approximately 7.2 miles to Hoback Junction. At Hoback Junction the project branches to the southwest, along U.S. 26/89, and to the east along U.S. 191/189. The Hoback Junction segment, along U.S. 26/89, is approximately 0.6 miles in length and includes the Snake River Bridge. The east segment, along U.S. 191/189, is approximately 2.9 miles in length.

Due to the independent utility of the three project segments, project limits for the EIS have been modified to include only the 7.2 mile segment of U.S. 26/89/189/191 from Hoback Junction to 6.1 miles south of Jackson (Jackson South) as described under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Lee D. Potter, FHWA Wyoming Division, 2617 E. Lincoln Way, Suite D, Cheyenne, WY 82001, (307) 772–2004, extension 146.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Wyoming Department of Transportation (WYDOT), hereby give notice that they intend to prepare an Environmental

Impact Statement for the Jackson South Segment (MP 141.3–148.6). The termini for this segment were deemed to have independent utility and logical termini because the alternatives under consideration will not require additional improvements or modification to the recently completed five-lane section south of Jackson or restrict consideration of alternatives at Hoback Junction. The Jackson South Segment primarily addresses travel demand, safety, and roadway deficiency needs, and includes construction of two Snake River crossings, two landslide areas, potential archaeological impacts and potential wetland impacts. The proposed alternatives will tie into the recently completed five-lane section south of Jackson, and will follow essentially the existing roadway alignment.

FHWA and WYDOT have solicited public input throughout the EIS process. Notice of future public meetings and public hearing will continue to be given through various forums providing the time and place of the meeting along with other relevant information. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Dated: September 11, 2007.

Philip E. Miller,

Division Administrator.

[FR Doc. E7–18233 Filed 9–14–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washington County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the Notice of Intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued January 13, 1997) to prepare an Environmental Impact Statement for a proposed highway project between Interstate 79 and the Mon/Fayette Expressway, southwest of the city of Pittsburgh.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3411—OR—Daryl Kern, Turnpike Liaison Engineer, Pennsylvania Department of Transportation, 400 North Street, Harrisburg, PA 17120, Telephone (717) 787–1085.

SUPPLEMENTARY INFORMATION: The Pennsylvania Turnpike Commission, the project sponsor, has decided to continue project development of project without federal funds or oversight. It is anticipated that the U.S. Army Corps of Engineers will now issue a Notice of Intent as the new federal lead agency.

(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)

James A. Cheatham,

FHWA Division Administration Harrisburg, PA.

[FR Doc. 07–4583 Filed 9–14–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209619–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209619–93, Escrow Funds and Other Similar Funds (§§ 1.469B–1(k)(2), 1.468B–1(k)(3)(iv), 1.468B–6(e)(1), 1.468B–6(f), 1.468B–7(d), 1.468B–8(f), 1.468B–8(g)(1), 1.468B–9(c)(1), and 1.468B–9(f)(3).

DATES: Written comments should be received on or before November 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation the form and instructions should be directed to Robert Black at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Robert.G.Black@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Escrow Funds and Other Similar Funds.

OMB Number: 1545–1631.

Regulation Project Number: REG–209619–93.

Abstract: These regulations would amend the final regulations for qualified settlement funds (QFSs) and would provide new rules for qualified escrows and qualified trusts used in deferred section 1031 exchanges; pre-closing escrows; contingent at-closing escrows; and disputed ownership funds.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

Estimated Number of Respondents: 9,300.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 4,650.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 7, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–18285 Filed 9–14–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–104072–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–104072–97 (TD 8853), Recharacterizing Financing Arrangements Involving Fast-Pay Stock (§ 1.7701(l)–3).

DATES: Written comments should be received on or before November 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Robert Black, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Robert.G.Black@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Recharacterizing Financing Arrangements Involving Fast-Pay Stock.

OMB Number: 1545–1642.

Regulation Project Number: REG–104072–97.

Abstract: Section 1.7701(l)–3 recharacterizes fast-pay arrangements. Certain participants in such arrangements must file a statement that includes the name of the corporation that issued the fast-pay stock, and (to the extent the filing taxpayer knows or has reason to know) the terms of the fast-pay stock, the date on which it was issued, and the names and taxpayer identification numbers of any shareholders of any class of stock that is not traded on an established securities market.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 7, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–18286 Filed 9–14–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Committee of the Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 9, 2007, at 9:30 a.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, October 9, 2007, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the Panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *www.improveirs.org*. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: September 11, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–18287 Filed 9–14–07; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 72, No. 179

Monday, September 17, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Docket No. AMS–LS–07–0106; LS–07–01]

RIN 0581–AC67

Livestock Mandatory Reporting; Reestablishment and Revision of the Reporting Regulation for Swine, Cattle, Lamb, and Boxed Beef

Correction

In proposed rule document 07–4405 appearing on page 51378 in the issue of Friday, September 7, 2007, make the following correction:

In the second column, in the fourth paragraph, in the seventh and eighth lines, ''September 5, 2007'' should read ''September 24, 2007''.

[FR Doc. C7–4405 Filed 9–14–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
September 17, 2007

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2005–0526; FRL–8466–6]

RIN 2060–AN21

National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA proposes national emission standards for hazardous air pollutants (NESHAP) for area sources engaged in paint stripping and miscellaneous surface coating operations. EPA has listed ''Paint Stripping,'' ''Plastic Parts and Products (Surface Coating),'' and ''Autobody Refinishing Paint Shops'' as area sources of hazardous air pollutants (HAP) that contribute to the risk to public health in urban areas under the Integrated Urban Air Toxics Strategy. These three source categories are being combined into one set of standards for the purposes of this rulemaking. Paint stripping operations subject to the standards being proposed include the use of methylene chloride-containing chemicals to remove paint and other coatings. Plastic parts and products surface coating operations include the application of coatings to miscellaneous parts and/or products made of metal or plastic, or combinations of metal and plastic. Autobody refinishing includes the application of coating to motor vehicles and mobile equipment. These proposed standards, when final, would require all methylene chloride (MeCl) containing paint stripping and miscellaneous surface coating operations at area sources to comply with equipment requirements and/or management practices that minimize specific HAP emissions. The standards would also establish training requirements for persons who spray apply coatings. These standards, when final, would apply to all area sources that perform methylene chloride-containing paint stripping and miscellaneous surface coating activities, except when other NESHAP apply.

DATES: *Comments.* Comments must be received on or before October 17, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before October 17, 2007.

Public Hearing: If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by September 27, 2007, we will hold a public hearing on October 2, 2007.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0526, by one of the following methods.

www.regulations.gov. Follow the on-line instructions for submitting comments.

E-mail: a-and-r-docket@epa.gov.

Fax: 202–566–1741.

Mail: Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below see **FOR FURTHER INFORMATION CONTACT**. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

Hand Delivery: Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20014. Such deliveries are accepted only 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–2005–0526. 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 with a 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.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Do not send proprietary information to the public docket to ensure that it is not inadvertently placed in the docket. Instead, send proprietary information directly to the following address: Attention: Mr. Roberto Morales, U.S. Environmental Protection Agency, OAQPS Document Control Officer, 109 T.W. Alexander Drive, Room C404–02, Research Triangle Park, NC 27711. EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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 for the Air and Radiation Docket is (202) 566–1742.

Public Hearing: If you are interested in attending the public hearing, contact Ms. Dorothy Apple at (919) 541–4487 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Mr. Warren Johnson, Office of Air Quality Planning and Standards, Sector Policies and Programs

Division, Natural Resources and Commerce Group (E143–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5124, or e-mail at *johnson.warren@epa.gov.* For technical information concerning the proposed surface coating standards, contact Ms. Kim Teal, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5580, or e-mail at *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How is this document organized?

The information presented in this preamble is organized as follows:

I. General Information
A. How is this document organized?
B. Does this action apply to me?
C. What should I consider as I prepare my comments to EPA?
II. Background Information for Proposed Area Source Standards
A. What is the regulatory development background for the proposed standards for paint stripping and miscellaneous surface coating operations?
B. Where in the Code of Federal Regulations (CFR) will these standards be codified?
C. What criteria are used in the development of these NESHAP?
D. What are the sources of emissions and the HAP for which these area source categories were listed?
E. What are the health effects associated with the pollutants emitted by paint stripping and miscellaneous surface coating operations?
F. How has EPA regulated major sources in the same industrial sectors (similar sources) and what has EPA learned about available control technologies and management practices from regulating these major sources?
III. Proposed NESHAP for Paint Stripping and Miscellaneous Coating Operations at Area Sources
A. What are the affected area sources?
B. What are the HAP and primary sources of emissions for which these source categories were listed?
C. Do the proposed standards apply to my source?
D. What emissions control requirements is EPA proposing?
E. What are the initial compliance requirements?
F. What are the continuous compliance requirements?
G. What are the notification, recordkeeping, and reporting requirements?
IV. Rationale for Selecting the Proposed Standards
A. What area source categories are affected by this proposal?
B. How did we select the affected source?
C. How did we determine the basis and level of the proposed standards for new and existing sources?
D. How did we select the format of the proposed standards?
E. How did we select the initial compliance and testing requirements?
F. How did we select the continuous compliance requirements?
G. How did we select the compliance date?
H. How did we decide to exempt these area source categories from the CAA title V permit requirements?
V. Impacts of the Proposed Standards
A. What are the air impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental, and energy impacts?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

B. Does this action apply to me?

Categories and entities potentially affected by the proposed rule are MeCl—containing paint stripping operations and miscellaneous surface coating operations located at area sources. An area source is defined in CAA section 112(a) as any stationary source of HAP that is not a major source, and a major source is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. For the purposes of this proposal, paint stripping operations are those that involve the use of MeCl for the partial or complete removal of surface coatings from wood, metal or plastic substrates at area sources as either (1) an independent activity where paint stripping is the principle activity at the source or (2) an activity incidental to the principle activity (e.g., surface coating, inspection, maintenance, etc.) at the source. We consider paint stripping activities that use less than 150 gallons per year to be incidental to the principle activity and those using 150 gallons or more to be performing paint stripping as a principle activity. Miscellaneous surface coating operations are those that involve the application of coatings at area sources to (1) miscellaneous parts and/or products made of metal or plastic, or combinations of metal and plastic; or (2) motor vehicles and mobile equipment (e.g., heavy duty-trucks, buses, construction equipment, self-propelled vehicles and equipment that may be drawn and/or driven on a roadway), hereinafter referred to as autobody refinishing. In general, the facilities and entities potentially affected by the proposed rule are covered under the North American Industrial Classification System (NAICS) Codes listed in the following table. However, facilities classified under other NAICS codes may be subject to the proposed standards if they meet the applicability criteria.

Category	NAICS	Examples of potentially regulated entities
Aerospace Equipment	336413 336414 336415 54171	Aircraft engines, aircraft parts, aerospace ground equipment.

Category	NAICS	Examples of potentially regulated entities
Automobiles and Automobile Parts	335312 336111 336211 336312 33632 33633 33634 33637 336399 441110 441120 811121	Engine parts, vehicle parts and accessories, brakes, axles, etc. Motor vehicle body manufacturing and automobile assembly plants. New and used car dealers. Automotive body, paint, and interior repair and maintenance.
Chemical Manufacturing and Product Preparation	325110 325120 325131 325188 325192 325193 325199 325998	Petrochemicals, Industrial Gases, Inorganic Dyes and Pigments, Basic Inorganic and Organic Chemicals, Cyclic Crude and Intermediates, Ethyl Alcohol, Miscellaneous Chemical Production and Preparation.
Extruded Aluminum	331316 331524 332321 332323	Extruded aluminum, architectural components, coils, rod, and tubes.
Government	N/A	Government entities, besides Department of Defense, that maintain vehicles, such as school buses, police and emergency vehicles, transit buses, or highway maintenance vehicles.
Heavy Equipment	33312 333611 333618	Tractors, earth moving machinery.
Job Shops	332312 332722 332813 332991 332999 334119 336413 339999	Manufacturing industries not elsewhere classified (e.g., bezels, consoles, panels, lenses).
Large Trucks and Buses	33612 336211	Large trucks and buses.
Metal Buildings	332311	Prefabricated metal buildings, carports, docks, dwellings, greenhouses, panels for buildings.
Metal Containers	33242 81131 322214 331513 332439	Drums, kegs, pails, shipping containers.
Metal Pipe and Foundry	331111 331513 33121 331221 331511	Plate, tube, rods, nails, etc.
Rail Transportation	33651 336611 482111	Brakes, engines, freight cars, locomotives.
Recreational Vehicles and Other Transportation Equipment.	321991 3369 331316 336991 336211 336112 336212 336213 336214 336399 336999 33635 56121 8111 56211	Mobile Homes. Motorcycles, motor homes, semi trailers, truck trailers. Miscellaneous transportation related equipment and parts. Travel trailer and camper manufacturing.

Category	NAICS	Examples of potentially regulated entities
Rubber-to-Metal Products	326291 326299	Engine mounts, rubberized tank tread, harmonic balancers.
Structural Steel	332311 332312	Joists, railway bridge sections, highway bridge sections.
Waste Treatment, Disposal, and Materials Recovery	562211 562212 562213 562219 562920	Hazardous Waste Treatment and Disposal, Solid Waste Landfill, Solid Waste Combustors and Incinerators, Other Nonhazardous Waste Treatment and Disposal, Materials Recovery.
Other Industrial and Commercial	211112	Natural Gas Liquid Extraction.
	311942	Spices and Extracts.
	331311	Alumina Refining.
	337214	Office furniture, except wood.
	811420	Reupholstery and Furniture Repair.
	325211	Plastics Material Synthetic Resins, and Nonvulcanizable Elastomers.
	325510	Paint and Coating Manufacturing.
	32614, 32615	Plastic foam products (e.g., pool floats, wrestling mats, life jackets).
	326199	Plastic products not elsewhere classified (e.g., name plates, coin holders, storage boxes, license plate housings, cosmetic caps, cup holders).
	333313	Office machines.
	33422	Radio and television broadcasting and communications equipment (e.g., cellular telephones).
	339111, 339112	Medical equipment and supplies.
	33992	Sporting and athletic goods.
	33995	Signs and advertising specialties.
	336612	Boat building.
	713930	Marinas, including boat repair yards.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. Many types of entities that perform stripping and/or coating that are not listed in this table would be potentially affected by the proposed rule. To determine whether your facility, company, business, organization, etc., is subject to this action, you should examine the applicability criteria in section 63.11170 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI 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.

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (e.g., subject heading, **Federal Register** proposal publication date and reference page number(s)).

2. Follow directions—EPA may ask you to respond to specific questions.

3. Explain why you agree or disagree; suggest alternatives and provide substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the specified comment period deadline.

II. Background Information for Proposed Area Source Standards

A. What is the regulatory development background for the proposed standards for paint stripping and miscellaneous surface coating operations?

Section 112 of the Clean Air Act (CAA) requires EPA to develop NESHAP for both major and area sources that are listed for regulation under CAA section 112(c). As stated earlier, a major source is defined in CAA section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. An area source is any stationary source that is not a major source. Thus, area sources are those sources of HAP that do not emit nor have the potential to emit HAP at or above the 10 or 25 tpy thresholds.

CAA section 112(k)(3)(B) requires EPA to develop a list of at least 30 HAP which, as a result of area source emissions, pose the greatest threat to public health in the largest number of urban areas. We refer to these HAP as the ''urban HAP.'' Section 112(c)(3) of the CAA directs EPA to identify source categories or subcategories of area

sources that represent 90 percent of the emissions of the urban HAP.

On July 19, 1999, EPA published its Integrated Urban Air Toxics Strategy, which included both the list of urban HAP and the initial list of area source categories (64 FR 38706). The initial list of area source categories included ''Paint Stripping Operations''. On June 26, 2002 and November 22, 2002, EPA added ''Autobody Refinishing Paint Shops (67 FR 43112)'' and ''Plastic Parts and Products (Surface Coating) (67 FR 70427)'', respectively, to the list of area source categories. A primary goal of the Integrated Urban Air Toxics Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources in urban areas.

Sierra Club sued EPA, alleging a failure to complete standards for the area source categories listed pursuant to CAA section 112(c)(3)and (k)(3)(B) within the timeframe specified by the statute. See *Sierra Club* v. *Johnson,* No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3) and (k)(3)(B). Among other things, the order requires that, by December 15, 2007, EPA complete standards for certain area source categories.

In this action, EPA is proposing standards for the following area source categories: Paint stripping, plastic parts and products (surface coating), and autobody refinishing. In developing this proposed rule, we fully analyzed these three listed source categories and found that it is both reasonable and technically feasible to regulate emissions from these three source categories by a single set of emission standards. The processes, emission points, emission characteristics, and emission controls for plastic parts and products surface coating and autobody refinishing are very similar. Additionally, paint stripping is often performed as part of the surface preparation for both plastic parts and autobody refinishing which, by regulating within the scope of a single set of standards, reduces the burden of complying with multiple standards on the sources performing both the paint stripping and subsequent coating. This single set of emission standards that addresses all three categories also minimizes the cost of developing, permitting, and enforcing the standards. For purposes of this preamble and proposed rule, the term ''paint stripping and miscellaneous surface coating'' is used to indicate that the three area source categories of paint stripping, plastic parts and products (surface coating), and autobody refinishing have been treated as a single source category for purposes of developing this rule.

Early in the development of standards to implement EPA's Integrated Urban Strategy, the States expressed concern over the burden and resources that would be required for the States to take delegation for the implementation of the area source rules listed as part of the strategy. Specifically, States were concerned that implementing Federal requirements, in lieu of established State programs, would be overly burdensome with little or no additional emission reductions for certain source categories. In these discussions, the States acknowledged the provisions in CAA section 112(l) as a route for providing them this reduction of burden and flexibility in accepting delegation of some of the area source standards. Guidance on the provisions of CAA section 112(l) are presented in 40 CFR 63 Subpart E which provides certain administrative (i.e., monitoring, recordkeeping, and reporting) criteria for an alternative program to be considered equivalent. This guidance provides States with information regarding the necessary components for their program to be considered equivalent. EPA believes some States may have programs that address the emissions from the surface coating of motor vehicles and mobile equipment that are at least as effective as the proposed standards and encourages States to consider utilizing these provisions in lieu of implementing the proposed standards.

The EPA is seeking comment on (1) whether or not the States are interested in utilizing the Section 112(l) alternative program approach, and (2) what technical assistance the States may need to develop equivalency determinations.

B. Where in the Code of Federal Regulations (CFR) will these standards be codified?

The CFR is a codification of the general and permanent rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. The code is divided into 50 titles that represent broad areas subject to Federal Regulation. When final, these proposed standards will be published in Title 40, Protection of the Environment, part 63, subpart HHHHHH: National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations.

C. What criteria are used in the development of these NESHAP?

CAA section 112(d)(5) authorizes EPA to issue alternative emission standards for area sources in lieu of the authorities provided in CAA sections 112(d)(2) and 112(f). Specifically, section 112(d)(5), which is entitled ''Alternative Standard for Area Sources,'' provides:

> With respect only to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

Thus, CAA section 112(d)(5) authorizes EPA to promulgate standards under section 112(d)(5) that provide for the use of generally available control technologies or management practices (GACT), instead of issuing maximum achievable control technology (MACT) standards pursuant to CAA section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under CAA section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to CAA section 112(c)(3), which is the case in this proposal.

When setting a GACT standard for an area source category as opposed to a MACT standard, EPA must ensure that the GACT standard is consistent with the requirements of CAA section 112(d)(5) and have a reasonable basis for its GACT determination. Thus, in developing standards for area sources of HAP emissions, EPA evaluates the control technologies and management practices that reduce HAP emissions that are generally available for each area source category, and, in determining GACT, may establish standards on either (or both) generally available control technologies or (and) management practices that reduce the emission of HAP. EPA's analysis supporting the proposed GACT requirements is discussed in detail in section IV of this preamble.

D. What are the sources of emissions and the HAP for which these area source categories were listed?

EPA listed the area source paint stripping category pursuant to CAA section 112(c)(3) based on emissions of MeCl contained in paint stripper formulations. The emissions of MeCl comes from evaporative losses during the use or storage of MeCl. EPA listed

the area source miscellaneous coating operations category pursuant to section 112(c)(3) based on emissions of cadmium, chromium, lead compounds (lead), manganese and nickel compounds that are in the coatings, as part of the pigment in topcoats or for the corrosion protection in primers. For purposes of this proposal we will refer to these HAP as the ''target HAP.''

The anticipated national impacts of these proposed standards is summarized in section V of this preamble.

E. What are the health effects associated with the pollutants emitted by paint stripping and miscellaneous surface coating operations?

Emissions data collected in the development of this proposed rule shows that HAP emitted from paint stripping and miscellaneous surface coating operations are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (e.g., central nervous system effects, blood disorders, cancer) and acute health disorders (e.g., irritation of eyes, nose and throat, with long-term impairment of lung function possible at high acute exposures). The proposed rule protects air quality and promotes the public health by reducing the emissions of the HAP for which the three source categories at issue in this proposed rule were listed.

F. How has EPA regulated major sources in the same industrial sectors (similar sources) and what has EPA learned about available control technologies and management practices from regulating these major sources?

Major sources performing paint stripping and surface coating of miscellaneous parts and/or products made of metal or plastic, or combinations of metal and plastic; or motor vehicles and mobile equipment (e.g., heavy duty-trucks, buses, construction equipment, self-propelled vehicles and equipment that may be drawn and/or driven on a roadway), were addressed in different surface coating NESHAP requiring MACT level of control, of which the last NESHAP was promulgated in 2004. Major sources must currently be in compliance with those surface coating NESHAP.

Paint stripping was a separately listed major source category under CAA section 112 (c)(1), however, during the data gathering phase EPA determined that there were no major source paint stripping operations conducted independent of surface coating. Therefore, all paint stripping operations were covered in each surface coating NESHAP, as part of the cleaning material used for surface preparation activities. Each NESHAP assumed that the initial emission control technology would be reduction of the usage of HAP cleaners or implementation of management practices to reduce the evaporative losses from these cleaning activities.

The data gathering for the major source categories revealed that when the coatings are spray-applied, it was common practice to perform application of the coatings within the confines of a spray booth to minimize worker exposure. This limited the dispersion of the HAP to the parts being coated as solids in the dry coating film, deposition onto the walls, floor, and grates of the spray booths in which they are applied, or some of the HAP particles would be entrained in the spray booth exhaust air. We have learned, as part of the data gathering phase of this area source proposal that although most, if not all, sources are spray applying these coatings in a spray booth, not all of the spray booths are capable of capturing and controlling the target HAP (the HAP for which the area source categories at issue here were listed pursuant to CAA section 112(c)(3).

III. Proposed NESHAP for Paint Stripping and Miscellaneous Coating Operations at Area Sources

A. What are the affected area sources?

The sources that would be affected by the proposed standards are area sources engaged in paint stripping using MeCl, and/or engaged in coating of miscellaneous parts and/or products made of metal or plastic, or combinations of metal and plastic, or autobody refinishing. The proposed standards would not apply to any of these operations that are specifically covered under another area source NESHAP (e.g., the NESHAP for Defense Land Systems and Miscellaneous Equipment currently under development). While these sources are not currently listed pursuant to CAA section 112(c)(3) or 112(k)(3)(b), we intend to list them under these provisions of the act.

B. What are the HAP and primary sources of emissions for which these source categories were listed?

Paint Stripping Operations

The primary source of emissions from paint stripping operations and the HAP for which this source category was listed pursuant to CAA section 112(c)(3) (the ''target HAP'') is the MeCl contained in paint stripper formulations. The primary source of the MeCl emissions in this source category comes from evaporative losses during the use or storage of MeCl.

Miscellaneous Coating Operations

The primary sources of emissions from miscellaneous coating operations are the metal pigments that are in the coatings and/or refinish material. The target HAP for which these source categories were listed are the heavy metals including cadmium, chromium, lead, manganese and nickel compounds. The primary source of emissions of these HAP are the spray application of the coatings and curing process.

The heavy metals are contained primarily in the coatings (e.g., primers and the pigments in topcoats) and include compounds of lead (Pb), trivalent chromium (Cr-III), or hexavalent chromium (Cr-VI), plus compounds of other metals that are considered HAP, such as cadmium, manganese, and nickel. The metal HAP compounds are emitted as the coatings are atomized during spray application. A substantial fraction of coating that is atomized does not reach the part and becomes what is termed ''overspray.'' The fraction that becomes overspray depends on many variables, but two of the most important are the type of equipment and the skill of the painter. Some overspray lands on surfaces of the spray booth and the masking paper that is usually placed around the surface being sprayed, but the rest of the overspray is drawn into the spray booth exhaust system. If the spray booth has filters, most of the overspray is captured by the filters; otherwise, it is exhausted to the atmosphere.

After coating application, the spray gun must be cleaned to remove the remaining coating before it cures and to prepare it for the next coating job. Solvents used for equipment cleaning may contain the same HAP as the coatings they remove. Spray guns are usually cleaned in a device, commonly referred to as an enclosed spray gun washer, that consists of a solvent reservoir and a covered enclosure that dispenses solvent for gun cleaning. The enclosure may hold the gun for automated gun cleaning. During gun cleaning, HAP from the cleaning solvent and the coating may be emitted as the cleaning solvent is sprayed through the gun during cleaning from the equipment that stores and dispenses the cleaning solvent while it is opened.

C. Do the proposed standards apply to my source?

The area source requirements specified in the proposed rule would apply to your source if your source (or

facility) is an area source that performs (1) paint stripping using MeCl-containing chemicals or (2) surface coating using spray equipment.

The area source requirements specified in the proposed rule would not apply if your paint stripping or surface coating operations meet any of the following:

- Paint stripping or surface coating performed on-site at installations owned or operated by the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State), or the National Aeronautics and Space Administration because these activities will be subject to the area source NESHAP for military operations which is in development.
- Paint stripping or surface coating of military munitions manufactured by or for the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State) or equipment directly and exclusively used for the purposes of transporting munitions manufactured by or for the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State) because these activities will be subject to the area source NESHAP for military operations which is in development.

D. What emissions control requirements is EPA proposing?

This section describes the proposed emissions control requirements for paint stripping and miscellaneous coating operations. The basis for these proposed requirements is discussed in section IV, below.

Paint Stripping Operations

All sources conducting paint stripping involving the use of MeCl must implement management practice standards that reduce emissions of MeCl by minimizing evaporative losses of MeCl.

In addition to the management practices, sources that use 150 gal or more of paint stripper containing MeCl, per year would need to develop and implement a MeCl minimization plan consisting of a written plan with the criteria to evaluate the necessity of MeCl in the stripping operations and management techniques to minimize MeCl emissions when it is needed in the paint stripping operation.

The MeCl minimization plan evaluation criteria would involve only using a MeCl-containing paint stripper when an alternative on-site stripping method or material is incapable of accomplishing the work as determined by the operator. Alternative methods to reduce MeCl usage may include: (1) Non-MeCl-containing chemical strippers; (2) mechanical stripping; (3) blasting (including dry or wet media); or (4) thermal and cryogenic decomposition.

The management practices that would be required to be contained in the plan include optimizing stripper application conditions, reducing exposure of stripper to the air, and practicing proper storage and disposal of materials containing MeCl. Sources would be required to submit the plan either to EPA or to the delegated state permit authority, keep a written copy of the plan on site and post a placard or sign outlining the evaluation criteria and management techniques in each area where MeCl-containing paint stripping operations occur.

Miscellaneous Coating Operations

All sources conducting surface coating operations involving spray-applied coatings would need to apply the coatings with a high volume, low pressure (HVLP) spray gun, electrostatic spray gun, or a gun demonstrated to be equal in transfer efficiency to an HVLP spray gun. All spray-applied coatings would need to be applied in a prep station or spray booth, with a full roof and at least three complete walls or complete side curtains, ventilated so that air is drawn into the booth. The exhaust from the prep station or spray booth would need to be fitted with fiberglass or polyester fiber filters or some other filter technology demonstrated to achieve at least 98 percent capture efficiency of paint overspray. As explained further below, we are proposing that the combination of these technologies are GACT for the miscellaneous surface coating operations.

Additionally, sources would be required to comply with the management practices by demonstrating that (1) all painters that spray-apply coatings are certified and (2) that all spray gun cleaning performed by spraying HAP solvent through the gun is performed in an enclosed spray gun cleaner or by cleaning the disassembled gun parts by hand (i.e., spraying HAP solvent through a gun outside of a gun cleaner would be prohibited). The painter would need to be certified as having completed classroom and hands-on training in the proper selection, mixing, and application of coatings. Refresher training would need to be repeated at least once every 5 years. The initial and refresher training would need to address the following topics:

- Surface preparation (prep).
- Spray gun set up and operation and spray technique for different types of coatings to improve transfer efficiency and minimize coating usage and overspray.
- Routine spray booth and filter maintenance.
- Paint mixing, matching, and applying.
- Resolving paint application problems.
- Finish defects causes and cures.
- Safety precautions.
- Environmental compliance.

E. What are the initial compliance requirements?

If your facility is a new source (one that began construction or reconstruction after the date this rule is proposed) and you use MeCl in your paint stripping operations or you spray apply coatings, you would be required to comply with all of the requirements established in this subpart as of the date of promulgation of the final rule or upon startup, whichever is later.

If your facility is an existing source (one that began construction or reconstruction before the date this rule is proposed), you would be required to comply with the requirements no later than 2 years after the date the final rule is published. In addition, each painter would need to comply with the training requirements of the rule no later than 60 days after hiring. Painters would be allowed to use training that was completed within 5 years prior to the date training is required to meet this requirement. All painters would need to receive refresher training and be re-certified every 5 years.

To demonstrate initial compliance for paint stripping operations, you would need to:

- Certify that you have implemented a best management practices plan, and
- If you are a source that uses 150 gal or more of paint stripper containing MeCl, per year, certify that you have developed and implemented a MeCl minimization plan consisting of a written plan with the criteria to evaluate the necessity of MeCl in the stripping operations and management techniques to minimize MeCl emissions when it is needed in the paint stripping operation.

To demonstrate initial compliance for miscellaneous surface coating operations, you would need to:

- Certify that all coatings are sprayed in booths or prep stations that are fitted with filters.
- Certify that all spray guns are HVLP or an equivalent.
- Certify that all painters that apply coatings using a spray gun have completed the training described in section III.D. of this preamble.

• Certify that all gun cleaning is performed in enclosed gun cleaners or by hand.

After the compliance date for your source, you would have 120 days if you are a new source, and 30 days if you are an existing source, to submit a notification of compliance status to the EPA or a delegated State or local air pollution control agency.

You would also be required to submit an initial notification to the EPA or the delegated agency that you are subject to the standard. You would have 120 days after startup or publication of the final rule (whichever is later) to submit the initial notification if you are a new source. If you are an existing source, you would have 1 year after publication of the final rule to submit the initial notification.

If your facility is an existing source, you would be required to comply with the requirements no later than 2 years after the date the final rule is published. In addition, each painter would need to comply with the training requirements of the rule no later than 60 days after hiring. Painters would be allowed to use training that was completed within 5 years prior to the date training is required to meet this requirement. All painters would need to receive refresher training and be re-certified every 5 years.

F. What are the continuous compliance requirements?

To demonstrate continuous compliance, you would need to continually maintain the emission control requirements (i.e., management practices and equipment requirements) that are described in section III.D. of this preamble.

G. What are the notification, recordkeeping, and reporting requirements?

You would be required to submit an initial notification to the EPA or the delegated agency that you are subject to the standard. If you are a new source, you would have 120 days after startup or publication of the final rule (whichever is later) to submit the initial notification. If you are an existing source, you would have 1 year after publication of the final rule to submit the initial notification.

After the compliance date for your source, you would have 120 days if you are a new source and 30 days if you are an existing source to submit a notification of compliance status to the EPA or a delegated State or local air pollution control agency.

Paint Stripping Operations

For paint stripping operations, you would need to maintain records demonstrating the following:

• Annual usage of MeCl in paint strippers is below 150 gallons (if you are a source qualifying for the best management practices, only); or

• You have complied with the MeCl minimization plan.

If you are required to have a MeCl minimization plan, you would also be required to submit annual compliance reports in which you certify that the source is in compliance, or report the date, duration, and description of any deviations from the MeCl minimization plan that occurred and the corrective actions taken.

Miscellaneous Coating Operations

For miscellaneous coating operations, you would need to maintain records demonstrating the following:

• All spray painters are trained and certified;

• Any spray booth filters or particulate controls that are not fiberglass or polyester fiber filters achieve at least 98 percent efficiency; and

• Any spray guns that do not meet the definition of HVLP or electrostatic spray gun have been demonstrated to achieve comparable transfer efficiency.

• Spray gun cleaning is being performed manually or in an enclosed gun cleaner when solvent is being atomized through the gun as part of the cleaning process.

You would also be required to submit annual compliance reports in which you certify that the source is in compliance, or report the date, duration, and description of any deviations from the specified control requirements that occurred and the corrective actions taken.

IV. Rationale for Selecting the Proposed Standards

A. What area source categories are affected by this proposal?

As discussed above, this rulemaking covers facilities engaged in MeCl paint stripping and spray applied surface coating of parts and/or products made of metal or plastic, or combinations of metal and plastic; and refinishing of motor vehicles and mobile equipment which are a source of emissions of MeCl, cadmium, chromium, lead, manganese and nickel compounds which are the target HAP described above.

B. How did we select the affected source?

In selecting the affected source for emission standards, our primary goal is to ensure that all emission points responsible for the emissions of the target HAP (i.e., MeCl & the heavy metals) in each listed source category are controlled as specified in CAA section 112(d)(5), described previously in Section II.C. The affected source also serves to establish when new source standards should be applied. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms ''construction'' and ''reconstruction'' with reference to the term ''affected source'' (40 CFR part 63.2) and provide that new source standards apply when construction or reconstruction of an affected source occurs.

The affected source for this proposed rule is broadly defined to include all operations associated with the removal of paint from a substrate using MeCl and the spray application of coatings. These operations include the use of MeCl-containing paint strippers by immersion, brushing on, and/or spraying on to remove a coating to change the color of the item or because the life of the coating has been exceeded, or to remove paint for inspection purposes or during repair; storage and mixing of coatings and other materials; surface preparation; coating application and flash-off; drying and curing of applied coatings; cleaning operations; and waste handling operations.

Each of the equipment items subject to regulation (e.g., containers of paint or stripper, spray booths, spray guns, gun cleaners) is either a relatively low cost item, or could be easily moved about inside a paint stripping and miscellaneous surface coating operation, hence, for this proposal, a broad definition of affected source that encompasses the entire paint stripping and miscellaneous surface coating operation was selected. This approach would subject the entire operation to the same compliance date. Had we proposed a narrow definition for an affected source, replacement or purchase of a single item could cause that item to be considered a new source, resulting in different compliance dates and additional reporting. Furthermore, for the most part, new and existing affected sources are subject to the same emission standards, so the same environmental benefit will be realized regardless of whether the source is considered new or existing. Defining the affected source narrowly could result in

a paint stripping or miscellaneous surface coating operation having several affected sources that could be subject to different compliance dates, but the same standards, imposing additional burdens on the source without any environmental benefit.

C. How did we determine the basis and level of the proposed standards for new and existing sources?

As previously stated above, CAA section 112(d)(5) authorizes EPA to establish emission standards for area sources that provide for the use of generally available control technologies or management practices that reduce emissions of HAP (GACT). Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We began the rule development process by identifying other standards developed for these specific processes. As discussed in section II.E., above, we evaluated the emission control technology at major sources for the types of operations found in these area source categories to determine whether or not they were reasonable, feasible, and cost-effective for the area sources. Based on the findings of the major source NESHAP data gathering, the technology considered to be appropriate for the target HAP, and the availability of the technology, we considered whether or not these same emission controls were technically feasible and generally available for the area source categories.

Next, we met with industry associations and discussed their current processes and the feasibility of adopting the emission control technology specified as appropriate for the major sources. We learned that, in fact, similar technology (i.e., spray booths, painter training, HVLP guns, enclosed gun cleaners, and management practices to reduce HAP usage) were already being employed at many of the area sources. Therefore, it was determined that, given the availability and cost-effectiveness of these emission control technologies, they represent GACT for the targeted HAP from each source category (i.e., paint stripping, autobody refinishing, and plastic parts surface coating). As previously stated, the target HAP emissions for which these source categories were listed are MeCl from paint stripping operations and cadmium, chromium, lead, manganese and nickel compounds from the coatings operations. The resulting proposed GACT standards are a combination of technology and management practices that control the target HAP, and have a co-benefit of reducing other associated emissions [1] from these operations. The co-benefit is realized due to the fact that the same technology applied to control the target HAP emissions are also the best techniques for reducing some other emissions associated with these operations.

In the development of these proposed emission standards, EPA visited numerous paint stripping and coating operations, collected data from various databases, and compiled information received during previous data collection activities. We also met with facility owners and other representatives of these industries. These site visits, data review and contacts with industry provided the technical basis for the proposed standards and are included in the public docket for this rulemaking.

Paint Stripping

MeCl is the most common solvent and the target HAP for this source category. Since MeCl is the target HAP, our analysis in determining GACT began with understanding alternative stripping technologies and best management practices to minimize MeCl emissions at existing major and area sources. In selecting GACT for affected area sources that perform paint stripping operations, we determined that best management practices to minimize evaporative losses (fugitive emissions) from MeCl in paint stripper formulations was not only a practice that many in the industry use, but also was generally cost effective for all sources in this category.

As part of the GACT analysis, we considered whether there were differences in processes, sizes, or other factors affecting emissions, control technologies or management practices that would warrant subcategorization. Under CAA section 112(d)(1) of the CAA, EPA ''may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standard.'' In looking to other means by which MeCl emissions could be reduced from these operations, we did recognize that some sources utilized alternative stripping technologies (e.g., blasting) to accomplish much of their work. These sources, distinguishable from the rest of the category by having other available on site methods to strip paint not involving MeCl, could reasonably route work away from paint stripping operations that involved MeCl as a means of control. Pursuant to section 112(d)(1), we have subcategorized these sources with alternative stripping methods by class. As mentioned earlier, these different paint stripping methods include (1) non-MeCl—containing chemical strippers; (2) mechanical stripping; (3) blasting (including dry or wet media); and (4) thermal or cryogenic decomposition. We also recognized that this subcategory represented the 30 percent (approximately) of the source category with the highest MeCl emissions. We determined that sources that used 150 gallons or more per year of paint stripper containing MeCl was the best approximation criteria for defining this subcategory for three reasons.

First, based on our findings from: (1) A study of paint stripping facilities (referenced in a Metropolitan Water District of Southern California (Environmental Defense Fund) document entitled ''Source Reduction and Recycling of Halogenated Solvents in Paint Stripping—Technical Support Document''), (2) our understanding of the affected facilities, and (3) our analysis of the model plants, for facilities using 150 gallons of MeCl or more per year, we believe it is reasonable to expect cost savings from the process of routing work away from paint stripping operations involving MeCl to other means of stripping. The study of paint stripping facilities highlighted to us that a good portion of paint stripping at these facilities (as high as 90 percent at one facility) was not really necessary. In being conservative, we believe that 5 percent of paint stripping is not necessary. An example of paint stripping that may be found as not necessary includes the

[1] The baseline emissions from the surface coating operations are estimated to be about 38,000 tpy of HAP, including 12.4 tpy of inorganic HAP (e.g.; Pb and Cr-VI compounds), 123,500 tpy of criteria pollutants including 3,100 tpy of particulate matter (PM) from paint overspray and 120,400 tpy of volatile organic compounds (VOC) from coating and solvent evaporation.

refinishing of personal oxygen gas cylinder surfaces (that often automatically get stripped of paint for cosmetic purposes during recycling) when they actually need no refinishing for serviceability. In addition, we believe that there is a slight cost savings associated with routing work away from paint stripping involving MeCl to a media blasting technique, when the media involved is recycled. Second, our analysis of model plants suggested that most facilities using 150 gallons of MeCl or more per year had other methods of stripping available on site (e.g., blasting or thermal) to which work could be easily routed. Finally, we recognized that the 150 gallon threshold reasonably coincides with exposure levels at which Occupational Safety and Health Administration (OSHA) requirements (29 CFR 1910.123–1910.126) are to be implemented. OSHA provided specific dip tank size criteria to characterize which size tanks must follow specific worker safety requirements. We calculated, based on the sizes provided by OSHA, the volume of stripper that the minimum tank would hold and used this volume for our size criteria. For these reasons we are proposing that facilities using 150 gallons of MeCl or more per year must, in addition to the best management practices to minimize evaporative losses, develop and implement the MeCl minimization plan mentioned earlier.

We recognize that given the wide range of paint stripping operations and techniques, there is no single substitute that could completely eliminate the need for MeCl–containing paint strippers, particularly on confined and hard to reach surfaces where other methods tend not to remove paint as well. We do, however, believe that given the existing management practices currently exercised by much of this industry, it is not unreasonable to incorporate management practices that minimize or eliminate MeCl emissions from many of the applications where MeCl–containing paint strippers are used. Therefore, we are proposing standards that require operators to employ management practices to reduce the emissions of MeCl through alternative paint stripping techniques when possible, and, for sources that use 150 gallons of MeCl or more per year to develop and implement a minimization plan to reduce MeCl-containing paint stripper use when it is not needed.

Miscellaneous Surface Coating

The emissions from these operations come primarily from the spray application of coatings. Although most of the HAP are deposited as part of the paint film, some of the HAP becomes airborne in the paint overspray. The volume of coating deposited as part of the paint film as a fraction of the volume of paint sprayed is referred to as the transfer efficiency (i.e., 60 percent of the coating sprayed is deposited as paint film then the transfer efficiency is 60 percent).

Our analysis of operations that involve the spray application of coatings has determined that GACT for these coating operations is a combination of: (1) Confining all spray coating operations to a spray booth or equivalent ventilated and filtered enclosure, (2) using only spray equipment that is designed to achieve a high rate of transfer efficiency (HVLP or equivalent spray technology), and (3) having the spray equipment operator trained and certified in the techniques needed to properly set up and operate high transfer efficiency spray equipment in order to optimize the transfer efficiency.

Based on the site visits, data review, and contacts with industry, for which documentation is provided in the public docket for this rulemaking, we have determined that the standard practice among the majority of facilities in the miscellaneous surface coating industry is to perform nearly all spray painting inside a spray booth or ventilated prep station enclosed by curtains. The only exceptions are priming small areas, or performing spot repairs with an air brush. At many facilities, all spray painting is performed in a spray booth or ventilated prep station to reduce contaminants that would compromise the final finish and to maintain a clean work area. In addition, it is standard practice to filter the exhaust from the booth or prep station to capture paint overspray so that it is not deposited on ventilation equipment or surrounding property. Therefore, based on the availability and cost-effectiveness, we have determined that a filtered spray booth or prep station is GACT for all miscellaneous surface coating operations to control HAP emissions. The proposed standards would require all spray painting that is not done with an airbrush or hand-held non-refillable aerosol cans to be done in a filtered spray booth or prep station. We also conclude that the above proposed control requirements can be achieved without additional burden to affected sources because filtered spray booths or prep stations are already required in order to comply with OSHA standards for spray finishing operations (29 CFR 1910.94(c)).

At the majority of facilities that were visited, the spray booths were fitted with either fiberglass or polyester fiber filters on the spray booth and prep station exhaust. One facility had a water-wash spray booth filter and another had expanded polystyrene foam baffle filters. An EPA study entitled ''Comparative Study of Spray Booth Filter System Efficiency'', which is provided in the public docket for this rulemaking, determined that fiberglass and polyester fiber filters had superior performance, relative to other filter types, such as polystyrene foam and cardboard baffle filters, in controlling the heavy metals found in paint overspray and which are the target HAP for these source categories. Therefore, based on our findings during the site visits, information provided by the industry on the most commonly used filters, and the EPA study on filter effectiveness and the cost-effectiveness we have determined that these fiberglass and polyester fiber filters represent GACT for controlling the heavy metals present in paint overspray.

The proposed rule would allow for the use of other types of paint overspray filters, but they would be required to achieve 98-percent filter efficiency. This alternative was included since the EPA did not test all types of filters used in spray booths; therefore the market may already provide for filters that are as equally efficient which were not available or not tested in the EPA study, but nevertheless representative of GACT. The EPA study on filter effectiveness and filter efficiency data provided by filter vendors formed the basis for the 98-percent filter efficiency The limit represents a performance level that separates the fiberglass and polyester fiber filters from baffle type filters. The baffle type filters were shown in the EPA study to have poor performance in controlling fine particulate that can contain heavy metals.

The proposed standards would not prohibit the use of coatings that contain the heavy metals or target HAP for these source categories. Although California has prohibited the use of automotive refinish coatings that contain Cr–VI and cadmium (Cd), a nationwide prohibition would impose unreasonable burden on the industry, and could force facilities out of business due to a lack of alternative materials that could address the performance criteria (e.g., corrosion protection) that may be used in all environments across the United States. The proposed standards would specifically require spray equipment that is designed to achieve a high rate of transfer efficiency (HVLP or equivalent spray technology) in order to reduce the overall amount of coating

required to complete each coating job. Reducing the amount of coating required for each job directly correlates to significant reductions in the overall emissions from these coating operations. Conventional high-pressure air-atomized spray guns have a typical transfer efficiency of about 30 percent. That means that for every gallon of coating sprayed, only 0.30 gallon reaches the part being coated. The remaining 0.70 gallon misses the part and either lands on the booth walls and floor or is pulled into the spray booth filters and exhaust system. To get one gallon on the part, a conventional spray gun needs to use 3⅓ gallons of coating. HVLP and other types of high-efficiency spray guns use lower air pressures and achieve transfer efficiencies of about 50 percent, or greater, with appropriate operator training. To get one gallon on the part, a high efficiency spray gun needs to use only 2 gallons of coating. This increased transfer efficiency represents a 40 percent decrease in coating consumption and in resultant emissions compared to conventional spray guns. For these reasons, many surface coating operations have already switched to HVLP and other types of high efficiency spray guns.

All of the autobody refinishing facilities visited by EPA and about 80 percent of the other miscellaneous surface coating facilities for which EPA has data used HVLP or equivalent spray guns for coating application. About half these sources were not required to do so by regulations and have switched in order to reduce coating costs through reduced consumption. Regulations for autobody refinishing in 10 States require the use of HVLP spray guns or their equivalent statewide, and they are required in ozone non-attainment areas in 12 States without a statewide requirement. Given the cost-effectiveness and the use of HVLP or equivalent spray guns has been adopted at the facilities visited by EPA and is required in many States and ozone non-attainment areas, we have determined that these types of spray guns are GACT for spray-applied coatings.

The purpose of requiring the spray equipment operator to be trained and certified is to ensure that the operator is skilled in the techniques needed to achieve a high rate of transfer efficiency. We have concluded, based on the findings of the Spray Technique Analysis and Research (STAR®) program study presented in the following paragraph, and included in the public docket for this rulemaking, that even when spray operations are confined within a spray booth and appropriate spray technology is used, they are not as effective if the painter is not properly trained. We therefore have determined that GACT requires implementation of the above requirements by a trained painter.

The training would include measures intended to increase transfer efficiency and reduce overspray and coating usage. Most, if not all of the measures are currently offered in training provided by coating manufacturers on an annual basis. In addition to manufacturer-sponsored training, the STAR® program, which originated at the University of Northern Iowa Waste Reduction Center, has now been adopted at 37 locations (primarily community colleges) throughout the United States. Coating manufacturers currently provide this training to their clients as part of the service benefits of contracting with them and as a component in the warranty agreement. Data from the STAR® program demonstrate that spray operator training can increase transfer efficiency for those using high efficiency spray equipment from an average of about 50 percent to 60 percent, or more, representing a 20 percent reduction in coating usage compared to untrained operators. This 20 percent reduction in coating usage would translate into a 20 percent reduction in emissions of organic HAP that are contained in those coatings. It would also reduce emissions of the heavy metals that are in the coatings.

It is important to note that these ''untrained'' operators are not inexperienced painters. They often have many years of experience before they enter these training programs. However, they have not been specifically trained in how to best set up and operate high efficiency spray equipment and to optimize their technique to maximize transfer efficiency and minimize coating consumption.

About 3,500 painters have already completed STAR® training and at least one company operating multiple collision repair shops has established a STAR®–based in-house training program. Since many painters already attend regular training sponsored by coating companies and trade organizations, we determined that the specified painter training, or a comparable training program, is GACT for these source categories.

Our analysis has determined that the proper training and certification for spray coating operators should be comparable to existing programs such as those offered by The Inter-Industry Conference on Auto Collision Repair (I–CAR) and the STAR®-based programs offered in various states. The essential elements of training and certification, for the purposes of achieving compliance with the requirements of the proposed standard, should at a minimum, train, examine and certify each spray equipment operator in the proper techniques in: (1) Coating material handling, including spills and clean up, (2) substrate preparations that minimize over spray, (3) proper equipment selection and set-up to optimize transfer efficiency, (4) coating application and spray technique that minimizes over spray, (5) spray equipment cleaning and maintenance, and (6) operating and maintaining a spray booth.

However, EPA does not believe that I–CAR and STAR® are the only programs that contain these essential elements for operator instruction and certification in the skills needed to achieve a high rate of transfer efficiency with proper equipment. The proposed rule does not limit training and certification to only these two programs, since the critical elements are the training components. We are open to and request comment regarding viable training and certification alternatives that are available to spray coating operators that should be considered that would achieve the same or comparable results. These alternatives could include, but not be limited to, state, community college, or industry sponsored training and certification programs, either on the job or through classroom, hands-on, or on-line instruction.

The proposed rule would require that all spray gun cleaning be done in enclosed spray gun cleaners, or the disassembled spray gun could be cleaned by hand without the benefit of atomization. Spraying of cleaning solvent through spray guns outside of an enclosed gun washer would be prohibited. All of the facilities visited by EPA had enclosed gun washers and other contacts with industry members indicate that this is standard practice among well-controlled facilities. Therefore, we have determined that an enclosed spray gun cleaner or hand cleaning is GACT for these source categories to reduce emissions from spray gun cleaning. We believe the measures in the proposed rule would effectively control emissions of the target HAP for these sources categories.

D. How did we select the format of the proposed standards?

The proposed standards are in the form of management practice standards and equipment standards. These include reducing the need for MeCl-containing paint strippers, painter training and the use of filtered booths or prep stations, HVLP spray guns, and

enclosed spray gun cleaners. This format was selected since these standards are the most universally applicable and effective for these source categories, they reflect the types of controls that are already in place at well-controlled facilities, and they would have the minimum burden for monitoring, recordkeeping, and reporting compared to other formats. Facilities applying coatings can use filters other than the specified types if the filters are demonstrated to achieve 98 percent filter efficiency. They may also use spray guns other than HVLP spray guns if the manufacturer has demonstrated to the EPA that they are equivalent in transfer efficiency.

The proposed standards do not include numerical emission limits. After considerable review of industry-supplied data for paint stripping and coatings, and consultation with the industry, we have determined that numerical emission limits are not feasible given the variability in the operational parameters (e.g., substrate (i.e., metal, plastic or wood), performance specifications, production rate, etc.) and the variety of work being performed, as many of the sources in these source categories are job shops. Given this variability for these sources EPA believes it is important to provide the greatest flexibility for these sources without compromising emission reductions.

E. How did we select the initial compliance and testing requirements?

The proposed rule includes the minimum requirements needed to demonstrate initial compliance. You would demonstrate initial compliance by implementing all of the requirements in the proposed rule by the dates specified in the rule, and certifying in the initial compliance notification that your source is in compliance.

This proposed rule is comprised of management practices and equipment requirements, of which sources have the option of substituting the specified equipment with alternative equipment that would achieve equivalent or better emissions reductions than that specified, provided they obtain approval from the Administrator as required in section 63.11173(e) of the proposed rule. However, test methods are needed in order to demonstrate equivalent performance of alternative equipment. For this reason, the proposed rule includes separate testing methods that would need to be followed to measure paint overspray filter efficiency when a source does not use fiberglass or polyester fiber filters, and to demonstrate that a paint spray gun is equivalent to an HVLP spray gun in transfer efficiency. The proposed methods represent those methods that are already in use to measure filter efficiency and equivalency to HVLP spray guns based on transfer efficiency. It is expected that the filter or spray gun supplier would complete these measurements and provide copies of the results to the purchaser so they could document compliance. We do not expect the owner of the surface coating operation to perform the measurements.

F. How did we select the continuous compliance requirements?

The proposed rule includes the minimum requirements needed to demonstrate continuous compliance. You would demonstrate continuous compliance by ensuring that you follow the prescribed best management practices for paint stripping operations. Further, if you use more than 150 gal per year of paint stripper containing MeCl, you must demonstrate compliance by implementing and following your MeCl Minimization Plan. For surface coating operations you would ensure that all painters maintain their training and certification, all spray-applied coating is done in a filtered spray booth or prep station, the filters are of the proper type or efficiency, all spray guns are HVLP or equivalent, and all gun cleaning is done in an enclosed spray gun cleaner or by hand. You would also need to maintain records that all painters are trained and certified, and that filters and spray guns meet the specifications for filter efficiency and transfer efficiency, respectively, if needed.

G. How did we select the compliance date?

You would be allowed 2 years to comply with the proposed standards if your operation is an existing source. We believe that 2 years is needed to allow adequate time for existing sources to ensure that all additional equipment, if needed, is purchased and installed and to provide sufficient time for painters employed by the 36,000 sources to receive the training that would be required by the proposed rule.

H. How did we decide to exempt these area source categories from the CAA title V permit requirements?

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule'').

The four factors that EPA identified in the Exemption Rule for determining whether title V is ''unnecessarily burdensome'' on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (see 70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (see 70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (see 70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (see 70 FR 75326).

In discussing the above factors in the Exemption Rule, we explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area

source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. As discussed below, we have determined that the exemptions from title V would not adversely affect public health, welfare and the environment.

In considering the exemption from title V requirements for sources in the categories affected by this proposed rule, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in this proposal and determined that the management practices currently used at most facilities is GACT and the rule requires recordkeeping that serves as monitoring and deviation reporting to ensure compliance. Because the proposal would require management practices for certain processes and requires recordkeeping designed to serve as monitoring and that recordkeeping assures compliance with the requirements of the proposed rule, additional monitoring requirements that might be added under title V would be unnecessary to assure compliance. Monitoring other than recordkeeping is not practical or appropriate in either case because the requirements are management practices. Records are required to ensure that the management practices are followed, including such records as the amount of MeCl use in paint stripping or the training certification for spray gun operators.

As part of the first factor, we also considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. For any affected area source facility, the proposed rule would require an initial notification, a compliance status report, and report of deviations. We considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6.

The proposed rule would also require affected facilities to certify compliance with the management practices identified as GACT. In addition, facilities must maintain records showing compliance with the required management practices and deviations. The information required in the deviation reports and records is similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3). We acknowledge that title V might impose additional compliance requirements on this category, but, we conclude that the monitoring, recordkeeping and reporting requirements of this proposed rule are sufficient to ensure compliance with the proposed standards, and title V would not significantly improve those compliance requirements.

Under the second factor, we determine whether title V permitting would impose a significant burden on the area sources in these categories and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. The EPA estimated that the average cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. While EPA does not have specific information for the burdens and costs of permitting for either paint stripping or miscellaneous surface coating area sources; there are inherent activities associated with the part 70 and 71 rules that are mandatory and impose burdens on every affected source. These activities include: Reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. For a more comprehensive list of requirements imposed on part 70 sources (and hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for facilities affected by this proposal, we found that nearly all of approximately 3,000 paint stripping and 36,000 miscellaneous surface coating facilities are small businesses, some having as few as one or two employees. These small sources lack the technical resources needed to independently comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. Given that title V permitting would impose significant economic and non-economic costs on nearly all of these area sources, we conclude that title V is a significant burden for sources in these categories. Furthermore, given the large number of sources in these categories and relative small facility size, it would likely be difficult for each to obtain independent assistance from their respective permitting authorities. We, thus, conclude that factor two strongly supports title V exemptions for facilities in these area source categories.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained under the second factor (above) that the economic and non-economic costs of compliance with title V would impose a significant burden on nearly all of the approximately 3,000 paint stripping and 36,000 miscellaneous surface coating facilities. We also concluded in considering the first factor that, while title V might impose additional requirements, that the monitoring, recordkeeping and reporting requirements in the NESHAP assure compliance with the management practices imposed in the NESHAP. In addition, below in our consideration of the fourth factor we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are high, and the potential for gains in compliance are low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for these area source categories.

Finally, in determining if title V requirements were unnecessarily burdensome, we considered whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the

NESHAP without relying on title V permits (factor four). In doing so, we considered whether there are sufficient State programs in place to enforce these proposed area source standards, and we believe that there are sufficient State programs to assure compliance with these proposed area source standards. In addition, we recognize that EPA retains authority to enforce these NESHAP anytime under CAA sections 112, 113 and 114. We concluded that title V permitting is ''unnecessary'' to assure compliance with these proposed standards because the statutory requirements for implementation and enforcement of these proposed standards by the delegated States and EPA are sufficient to assure compliance, in all parts of the United States, without title V permits. States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these proposed standards and conclude that, in light of all of the above, there are implementation and enforcement programs in place that are sufficient to assure compliance with these proposed standards without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source standards that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the standards. See 70 FR 75325–75326. In proposing this rule, we did not have similar data available on the specific enforcement as in the Exemption rule, but we have no reason to think that States will be less diligent in enforcing these proposed standards. See 70 FR 75326. In fact, States must have adequate programs to enforce the HAP regulations and provide assurances that it will enforce all NESHAP, including area source standards, before EPA will delegate the program. See 40 CFR part 63, subpart E.

In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with these proposed standards without relying on title V permitting.

Balancing the four factors for these area source categories strongly supports that title V is unnecessarily burdensome. While title V might add additional compliance requirements if imposed, we concluded that there would not be significant improvements to the compliance requirements in this proposed rule, because the proposed rule requirements are specifically designed to assure compliance with the management and equipment practices imposed on these area source categories. We also concluded that the economic and non-economic costs of compliance with title V, in conjunction with the likely difficulty this large number of small sources would have obtaining assistance from the permitting authority, would impose a significant burden on these area sources. We determined that the high relative costs would not be justified given that there was likely to be little or no potential gain in compliance likely to occur if title V were required, and that there are adequate implementation and enforcement programs in place to assure compliance with these proposed standards. Thus, we conclude that title V permitting would be ''unnecessarily burdensome'' for these area source categories.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome,'' EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting these area source categories from title V requirements would adversely affect public health, welfare, or the environment. Exemption of these area source categories from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for these categories, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. In these cases, however, placing all requirements for the source in a title V permit would do little to clarify the requirements applicable to each source or assist it in compliance with the proposed rule requirements, because of the simplicity of the source and the proposed standards, and the likelihood that these sources are not subject to other regulatory requirements under the CAA. We have no reason to think that new sources would be substantially different from the existing sources in these categories. In addition, we explained in the Exemption Rule that requiring permits for the large number of area sources could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. For this proposed rule, we conclude that title V exemptions for these area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the foregoing reasons, we are proposing to exempt these source categories from title V permitting requirements.

V. Impacts of the Proposed Standards

The EPA estimates that about 39,000 establishments perform paint stripping and miscellaneous surface coating operations. We estimate that about 3,000 of these establishments are paint stripping facilities and 36,000 establishments are surface coating operations. The majority of these surface coating establishments (about 35,000) are involved in motor vehicle and mobile equipment refinishing, and employ about 263,000 people, of which about one-third are painters.

A. What are the air impacts?

Paint Stripping Operations

The baseline MeCl emissions from paint stripping operations are estimated to be 3,800 tpy. Around 500 tpy is estimated to be emitted from the approximately 2,000 facilities that use less than 150 gal of paint stripper containing MeCl, per year (which approximately equals MeCl emissions of 1,000 pounds per year based on typical stripper formulations). The remaining 3,300 tpy is estimated to be emitted by the approximately 1,000 paint strippers that use more than 150 gallons of MeCl stripper and who would be required to develop a MeCl minimization plan.

Miscellaneous Coating Operations

The baseline emissions from the surface coating operations are estimated to be about 38,000 tpy of HAP, including 12.4 tpy of inorganic HAP (*e.g.* Pb and Cr-VI compounds). In addition to the HAP, baseline emissions of criteria pollutants are estimated to be 3,100 tpy of particulate matter (PM) from paint overspray and 120,400 tpy of volatile organic compounds (VOC) from coating and solvent evaporation.

Implementation of the proposed standards would achieve a reduction of 6,900 tpy of HAP from surface coating operations, including about 11.4 tpy of inorganic HAP. In addition to the HAP, we estimate PM reductions of about 2,900 tpy and VOC reductions of about 20,900 tpy. These reductions would occur as a result of reduced use of HAP-containing solvents and coatings, increased use of filtered spray booths to capture overspray, increased spray painter training and use of HVLP or equivalent guns to improve transfer efficiency and to reduce coating overspray and paint consumption, and increased use of enclosed spray gun washers. Additional detail on these calculations are included in the public docket for this rulemaking.

B. What are the cost impacts?

Paint Stripping Operations

We estimate that the proposed standards for paint stripping operations will result in an initial cost of around $1,500,000 and a net savings in annual costs. This includes an estimated initial cost of $490,000 and annual costs of $80,000 for the nearly 2,000 paint strippers whose annual usage of paint stripper containing MeCl is below 150 gallons. Initial costs for the approximately 1,000 paint strippers who use more than 150 gallons per year, who would be required to develop MeCl minimization plans are estimated to be just over $1 million. The annual costs for those plants are estimated to be a net savings of $920,000.

For the nearly 2,000 paint strippers whose annual usage of MeCl in paint strippers is below 1,000 lb, or whose annual usage of paint stripper containing MeCl is below 150 gallons, evaluation of improved methods to reduce the emissions of MeCl from evaporative losses comprise most of the costs.

The costs for the approximately 1,000 paint strippers who are required to develop MeCl minimization plans are attributable to the development and implementation of the MeCl minimization plan. Annual costs will include an estimated $400,000 for the development and implementation of the MeCl minimization plan and reporting requirements and an estimated $450,000 associated with switching paint stripping technologies. Annual savings resulting from the implementation of the MeCl minimization plan include an estimated $420,000 from the elimination of unnecessary stripping operations and $1,320,000 in management practice savings from the reduced use of MeCl-containing strippers. For reasons set out earlier in this preamble, we believe that 5 percent of paint stripping in the private sector is not necessary and specifically request comment as to whether or not 5 percent is an appropriate figure to use. Additional detail on these calculations are included in the public docket for this rulemaking.

Miscellaneous Coating Operations

We estimate that the proposed standards for surface coating operations will have no net annual cost to surface coating operations. The initial cost of complying with the proposed standards would be off-set and recovered over time by cost savings as a result of more efficient use of labor and materials by surface coating operations. The initial costs for surface coating operations are for purchase improved spray booth filters, automated enclosed gun washers, HVLP spray guns, and painter training, if needed to comply with the proposed standards.

Spray finishing operations are already required by OSHA standards to perform spray painting in a spray booth or similar enclosure. However, the proposed standards specify that certain types of filters have to be used on the spray booth exhaust to minimize HAP emissions, and these filters are not addressed by OSHA standards. Some surface coating sources may need to replace their current filters for ones with higher paint overspray capture efficiency, but the higher efficiency filters are readily available and will not result in an additional cost.

We estimate that about 5,000 facilities would need to purchase and install an enclosed spray gun washer. The total capital cost for each source that would need to install a gun washer was estimated to be approximately $1,800. This cost is the same for new and existing sources. The total capital cost for all 5,000 sources that would be required to purchase a spray gun washer was estimated to be $9.0 million.

The EPA estimates that sources that would need to purchase a spray gun washer would have no net annualized capital costs or operating costs. We estimate the annual costs would be offset from reduced labor to clean spray guns and reduced costs for cleaning solvent purchase and disposal. Spray gun washers are automated so that after loading the spray gun in the washer, the painters can perform other tasks while the spray guns are being cleaned. Automated spray gun washers are also capable of re-using solvent for gun cleaning to minimize solvent consumption and waste disposal. Finally, small surface coating facilities that do not currently have an automated gun washer can still comply with the proposed standards by cleaning guns by hand as long as they do not atomize cleaning solvent from the gun and they collect spent solvent in a container that is closed when not in use.

The estimated cost for training is $1,000 per painter, which covers tuition cost and labor cost for 16 hours of training time. Based on the United States census data collected to estimate new sources for this source category the number of refinishing shops in the United States remain constant (i.e., for every new shop, a shop closes) and it is expected that this trend will continue in the future. This reflects on the number of new painters that would need training. We assumed that training certification would be valid for 5 years, so about one-fifth of painters (20 percent) would receive training every year. We estimate that about 18,000 painters would be trained per year at an annual cost of $18 million per year.

However, EPA believes that these training costs could be over-stated for at least two reasons. First, many facilities already send their painters to training sponsored by paint companies and trade organizations. Paint companies sponsor painter training so that the paint company can reduce warranty claims on their paint products. These training courses already cover much of the same material required by the proposed rule. Therefore, the rule would not impose new training costs on these facilities that already participate in training.

Second, the estimated training cost could be offset by reduced coating costs if the training results in reduced coating consumption. Data from the STAR® training programs indicate that painters who complete this training can decrease the amount of coating sprayed by about 20 percent per job. We estimate that if a typical facility reduced their coating consumption and costs by about 4 percent per year, the cost savings would equalize the increased cost of training after one year, and there would be no net cost in training. To recover the cost of training over 5 years, a typical facility would need to reduce their coating consumption by slightly less than 1 percent. As previously mentioned, EPA

believes the costs associated with training are over-stated; however, we specifically request comment on whether or not these assumptions are accurate.

In summary, EPA estimates that the proposed requirements for surface coating operations would not result in any net increase in annual costs from the control requirements for surface coating operations. We estimated that the annual cost for recordkeeping and reporting for surface coating operations would be $7.8 million for about 36,000 surface coating operations, or an average of about $220 per facility. Cost estimates are based on the information available to the Administrator and presented in the economic analysis of this rule. Additional detail is included in the public docket for this rulemaking.

C. What are the economic impacts?

The economic impact analysis focuses on changes in market prices and output levels. A more detailed discussion of the economic impacts is presented in the economic impact analysis memorandum that is included in the docket.

Both the magnitude of control costs needed to comply with the rule and the distribution of these costs among affected facilities can have a role in determining how the market prices and quantities will change in response to the rule. In this case, we have so many facilities that model facilities must be used in the cost analysis. The cost analysis estimates that there will be no net increase in annual costs from the control requirements from the proposed regulation for surface coating operations. The record keeping and reporting costs are estimated to range from $76 to $95 per facility per year.

These costs are too small to have any significant market impact. Whether the costs are absorbed by the affected facilities or passed on to the purchaser in the form of higher prices, the impacts would be quite small.

The cost analysis estimates that there will be a net cost savings from the control requirements, recordkeeping, and reporting from the proposed regulation for paint stripping for all but the smallest model plant. The cost for the smallest model plant is estimated to be $11 a year.

Again, these costs are too small to have any significant market impact. Whether the costs are absorbed by the affected facilities or passed on to the purchaser in the form of higher prices, the impacts would be quite small.

While most of these facilities are small, the very small costs are not expected to be even a tenth of a percent of revenues. Thus a significant impact is not expected for a substantial number of small entities.

D. What are the non-air health, environmental, and energy impacts?

Paint Stripping Operations

We estimate that there will be a reduction in non-air health and environmental impacts resulting from the paint stripping area source NESHAP. Reduced usage of MeCl-containing chemical strippers will result in reduction in waste water generated from rinsing chemically stripped pieces. Additionally, reduced chemical stripping activity will result in a reduction in the generation of hazardous wastes composed of rags and other chemical stripper applicators and removal equipment.

EPA expects some increase in the need for energy to resulting from switching away from MeCl-containing chemical strippers to other paint stripping methods. There would be a slight increase in energy usage associated with switching to other chemical strippers that do not contain MeCl because they often need to be heated above room temperature to be most effective. There is also some increase in energy usage associated with non-manual mechanical stripping and blasting with both dry and wet media.

The energy usage increase would be somewhat more for thermal decomposition or cryogenic paint stripping technologies. Thermal decomposition basically uses natural gas heated ovens to bake the paint off the substrate. Cryogenic paint stripping methods have increased electricity demands associated with the production of liquid nitrogen or liquid carbon dioxide.

Miscellaneous Coating Operations

We estimated that about 5,000 surface coating operations would need to install spray booths to comply with the proposed standards. Spray booths would need electricity to run fans and natural gas to heat make-up air to maintain facility temperatures in colder weather. We estimate that this would lead to an increased electricity consumption of 9.8 million kilowatt hours per year and increased natural gas consumption of 724 million cubic feet per year. However, spray booths are already required for spray finishing operations to comply with OSHA standards, so theses impacts would not be assigned to these proposed standards.

Facilities that install spray booths would also need to dispose of used spray booth filters. These are often placed in a sealed drum to prevent spontaneous combustion and disposed of as hazardous waste. We estimate that 5,000 new spray booths could generate used filters equal to about 8,000 drums per year.

Facilities that install enclosed spray gun washers would need to dispose of spent solvent as hazardous waste that formerly may have been allowed to evaporate. However, we cannot estimate this amount because we cannot determine the baseline disposal practices for facilities that did not have enclosed spray gun washers. If facilities previously handled spent solvent waste as hazardous waste, the installation of an enclosed spray gun washer could lead to a more efficient use of cleaning solvent and could reduce the volume of waste generated.

We expect no increase in generation of wastewater or other water quality impacts. None of the control measures considered for this rule generates a wastewater stream.

The installation of spray booths and enclosed gun washers, and increased worker training in the proper use and handling of coating materials should reduce worker exposure to harmful chemicals in the workplace. This should have a positive benefit on worker health, but this benefit cannot be quantified in the scope of this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning And Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2268.01.

The information collection requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting

requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed standards would require sources to submit an initial notification that they are subject to the standards, submit a notification of whether or not the source is in compliance (the notification of compliance status), submit annual compliance reports, and keep records needed to demonstrate compliance. These requirements would be the minimum needed to ensure that sources were complying with the requirements of the proposed rule.

We estimate that about 40,000 existing area sources would be subject to the proposed standards. We estimate that about 1,600 new facilities would open per year in the 3 years following promulgation of the standards, but that the total number of facilities would remain constant as new facilities replace facilities that have closed.

New and existing sources would have no capital costs associated with the information collection requirements in the proposed standards.

The estimated recordkeeping and reporting burden in the third year after the effective date of the promulgated rule is estimated to be 62,877 labor hours at a cost of $2.2 million. This estimate includes, depending on the type of source, the cost of keeping records of paint stripping solvent consumption, painter training, spray booth filter efficiency, and spray gun transfer efficiency, and the cost of submitting annual compliance reports. The average hours and cost per facility would be 6.4 hours and $219. Each facility would be required to submit one compliance report per year. Starting in year 4, about 40,000 facilities would respond per year.

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.

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, we have established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–2005–0526. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **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 Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after September 17, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by October 17, 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

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the proposed area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201, which for the entities affected by the proposed rule is generally one having less than 500 to 1,000 employees, depending on the specific NAICS code under which that business is classified, or annual revenues of less than $6.5 million, refer to NAICS code table listed previously; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. There would not be adverse impacts on existing area sources in either of the three source categories because the proposed rule does not create any new burdens for existing sources, other than minimal notification and reporting requirements, and best management or equipment practices, which are designed to recover initial cost. We have determined that the cost of these requirements (estimated at less than $1,000 per year per facility) would not result in an adverse economic impact on any facility, large or small (i.e., the cost is less than one percent of total revenues, even for small businesses).

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. The proposed standards represent practices and controls that are common throughout the sources engaged in paint stripping and miscellaneous surface coating. The proposed standards also require the minimal amount of recordkeeping and reporting needed to demonstrate and verify compliance. These proposed standards were also developed in consultation with numerous individual small businesses and their representative trade associations. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a

written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined, based on discussions with State, local, and tribal governments during site visits, that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Some State, local, or tribal governments have paint stripping and/or miscellaneous surface coating operations (e.g., municipal fleet vehicle maintenance garages) that may be subject to the requirements of this proposed rule. However, we do not believe that any of them are operated by small government entities. Small government entities are expected to contract for refinishing services when these services are needed, rather than doing this work in-house. In addition, total expenditures for all entities to comply with the proposed rule are estimated to be less than $100 million in any year.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications''. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on 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. The EPA is required by CAA section 112, to establish the standards in the proposed rule. The proposed rule primarily affects private industry, and does not impose significant economic costs on State or local governments. The proposed rule does not include an express provision preempting State or local regulations. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation And Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications''. This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, or the relation 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 rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045: ''Protection Of Children From Environmental Health And Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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 rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, Or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Some of the affected sources would be expected to install and operate spray booths to comply with the rule and these would require electricity and natural gas to operate. However the increased use of energy by these sources would not have a significant effect on 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 (NTTAA) of 1995 (Pub. L. No. 104–113, Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA is citing the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992,'' to measure paint booth filter efficiency to measure the capture efficiency of paint overspray arrestors with spray-applied coatings.

The EPA is also citing California South Coast Air Quality Management District's (SCAQMD) methods: ''Spray Equipment Transfer Efficiency Test Procedure For Equipment User, May 24, 1989'' and ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002'' as methods to demonstrate the equivalency of spray gun transfer efficiency for spray guns that do not meet the definition of high-volume/low pressure (HVLP) or electrostatic spray.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these methods. The search and review results are in the docket for this rule.

One voluntary consensus standard was identified as applicable to this rule. The German standard DIN EN 13966–1:2003 ''Determination of the transfer efficiency of atomizing and spraying equipment for liquid coating materials—Part 1: Flat panels,'' appears to be applicable to this rule. We are inviting comment on the appropriateness of this standard to establish the transfer efficiency of spray guns that do not meet the definition of high-volume low-pressure or electrostatic spray guns.

For the methods required by the proposed rule, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under section 63.7(f) and section 63.8(f) of subpart A of the General Provisions. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income populations. The proposed rule establishes national standards for air quality that apply equally to all affected sources, whether or not they are located in or near minority or low-income populations. Hence there are no requirements in this proposal that would disproportionately affect these populations.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 6, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Part 63 is amended by adding subpart HHHHHH consisting of §§ 63.11169 through 63.11180 and table 1 to read as follows:

Subpart HHHHHH—National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

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Subpart HHHHHH—National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

What This Subpart Covers

§ 63.11169 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for paint stripping operations at area sources that involve the use of paint strippers (chemical formulations) that contain methylene chloride (MeCl) in paint removal processes, and/or miscellaneous surface coating operations at area sources. This subpart also establishes requirements to demonstrate initial and continuous compliance with the management practice standards contained herein.

§ 63.11170 Am I subject to this subpart?

(a) You are subject to this subpart if your facility is an area source of hazardous air pollutants (HAP) as defined in paragraph (c) of this section, including sources that are part of a tribal, local, State, or Federal facility and you:

(1) Perform paint stripping operations using a paint stripper containing MeCl, and/or

(2) Perform miscellaneous surface coating operations (including autobody refinishing).

(b) Paint stripping means the removal of dried coatings from wood, metal, plastic, and other substrates. Miscellaneous surface coating is the application of a coating to a substrate

using, for example, spray guns, brushes, or rollers. When application of coating to a substrate occurs, then miscellaneous surface coating operations also include associated activities, such as surface prep, cleaning, mixing, and storage.

(c) An area source of HAP is a source of HAP that is not a major source of HAP, is not located at a major source, and is not part of a major source of HAP emissions. A major source of HAP is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(d) This subpart does not apply to paint stripping or surface coating operations that meet any of the criteria of paragraphs (d)(1) through (2) of this section.

(1) Paint stripping or surface coating performed on-site at installations owned or operated by the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State), or the National Aeronautics and Space Administration.

(2) Paint stripping or surface coating of military munitions manufactured by or for the Armed Forces of the United States (including the Coast Guard and the National Guard of any such State) or equipment directly and exclusively used for the purposes of transporting military munitions as defined in § 63.11180.

(e) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

§ 63.11171 What operations does this subpart cover?

(a) This subpart applies to each new and existing affected area source engaged in the activities listed in paragraphs (a)(1) through (3) of this section:

(1) All paint stripping that involves the use of a paint stripper that contains MeCl;

(2) Surface coating of miscellaneous parts and/or products made of metal or plastic, or combinations of metal and plastic; and

(3) Finishing and refinishing of motor vehicles and mobile equipment.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (6) of this section. Not all affected sources will have all of the items listed in paragraphs (b)(1) through (6) of this section.

(1) Mixing rooms and equipment;

(2) Spray booths, ventilated prep stations, curing ovens, and associated equipment;

(3) Spray guns and associated equipment;

(4) Spray gun cleaning equipment;

(5) Equipment used for storage, handling, recovery, or recycling of cleaning solvent or waste paint; and

(6) Equipment used for paint stripping at paint stripping facilities using paint strippers containing MeCl.

(c) An affected source is a new source if it meets the criteria in paragraphs (c)(1) and (c)(2) of this section.

(1) You commenced the construction of the source after September 17, 2007 by installing new paint stripping or surface coating equipment. If you purchase and install paint stripping equipment, spray booths, enclosed spray gun cleaners, or purchase new spray guns to comply with this subpart at an existing source, these actions would not make your existing source a new source.

(2) The new paint stripping or surface coating equipment is used at a source that was not actively engaged in paint stripping and/or miscellaneous surface coating prior to September 17, 2007.

(d) An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

(e) An affected source is an existing source if it is not a new source or a reconstructed source.

General Compliance Requirements

§ 63.11172 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) and (b) of this section.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is after September 17, 2007, the compliance date is [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your new or reconstructed affected source occurs after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 2 years after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

§ 63.11173 What are my general requirements for complying with this subpart?

(a) Each paint stripping operation that is an affected area source must implement management practices to minimize the evaporative emissions of MeCl. The management practices must address, at a minimum, the practices in paragraphs (a)(1) through (6) of this section, as applicable, for your operations.

(1) Evaluate each application to ensure there is a need for paint stripping (e.g., evaluate whether it is possible to re-coat the piece without removing the existing coating).

(2) Evaluate each application where a paint stripper containing MeCl is used to ensure that there is no alternative paint stripping technology that can be used.

(3) Reduce exposure of all paint strippers containing MeCl to the air (e.g., use of a water layer or hollow plastic spheres to cover the stripper in an immersion tank).

(4) Optimize application conditions when using paint strippers containing MeCl to reduce MeCl evaporation (e.g., if the stripper must be heated, make sure that the temperature is kept as low as possible to reduce evaporation).

(5) Practice proper storage and disposal of paint strippers containing MeCl (e.g., store stripper in closed, air-tight containers).

(b) Each paint stripping operation with annual usage of 150 gallons or more of paint strippers containing MeCl must develop and implement a written MeCl minimization plan to minimize the use and emissions of MeCl. The MeCl minimization plan must address, at a minimum, the management practices specified in paragraphs (a)(1) through (5) of this section, as applicable, for your operations. Each operation must post a placard or sign outlining the MeCl minimization plan in each area where paint stripping operations subject to this subpart occur.

(c) Each paint stripping operation must maintain copies of annual usage of paint strippers containing MeCl on-site at all times.

(d) Each paint stripping operation with annual usage of 150 gallons or more of paint strippers containing MeCl must maintain a copy of their current

MeCl minimization plan on-site at all times.

(e) Each miscellaneous surface coating operation must meet the requirements in paragraphs (e)(1) through (e)(5) of this section.

(1) All painters must be certified that they have completed training in the proper spray application of surface coatings and the proper setup and maintenance of spray equipment. The minimum requirements for training and certification are described in paragraph (f) of this section. The spray application of surface coatings is prohibited by persons who are not certified as having completed the training described in paragraph (f) of this section. The requirements of this paragraph do not apply to the students of an accredited surface coating training program who are under the direct supervision of an instructor who meets the requirements of this paragraph.

(2) All spray-applied coatings must be applied in a spray booth or preparation station that meets the requirements of paragraph (e)(2)(i) of this section and either paragraph (e)(2)(ii) or (e)(2)(iii) of this section.

(i) All spray booths and preparation stations must be fitted with polyester fiber or fiberglass particle filters on the exhaust, or must be fitted with a type of filter technology that is demonstrated to achieve at least 98-percent capture of paint overspray. The procedure used to demonstrate filter efficiency must be consistent with the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Method 52.1, ''Gravimetric and Dust-Spot Procedures for Testing Air-Cleaning Devices Used in General Ventilation for Removing Particulate Matter, June 4, 1992.''

(ii) Spray booths and preparation stations used to refinish complete motor vehicles or mobile equipment must be fully enclosed with a full roof, and four complete walls or complete side curtains, and must be ventilated at negative pressure so that air is drawn into any openings in the booth walls or preparation station curtains.

(iii) Spray booths and preparation stations that are used to coat miscellaneous parts and products or vehicle subassemblies must have a full roof, at least three complete walls or complete side curtains, and must be ventilated so that air is drawn into the booth.

(3) All spray-applied coatings must be applied with a high-volume, low-pressure (HVLP) spray gun, electrostatic application, or an equivalent technology that is demonstrated by the spray gun manufacturer to achieve comparable transfer efficiency, and for which written approval has been obtained from the Administrator. The procedure used to demonstrate that spray gun transfer efficiency is equivalent to that of an HVLP spray gun must be equivalent to the California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'' and ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002.''

(4) All paint spray gun cleaning must be done with either non-HAP gun cleaning solvents, or with a fully enclosed spray gun cleaner. Hand cleaning of parts of the disassembled gun, such as the air cap, with HAP-containing solvent is permitted. Spraying of atomized or non-atomized HAP-containing cleaning solvent through the gun outside of the enclosed portion of the gun cleaner, or when the gun cleaner is opened, is prohibited.

(5) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency, may choose to grant you permission to use an alternative to the management practice standards in this section after you have requested approval to do so according to § 63.6(g)(2).

(f) Each owner or operator of an affected miscellaneous surface coating source must ensure and certify that all new and existing personnel, including contract personnel, who spray apply surface coatings are trained in the proper application of surface coatings as required by paragraph(e)(1) of this section. The training program must include, at a minimum, the items listed in paragraphs (f)(1) to (f)(3) of this section.

(1) A list of all current personnel by name and job description who are required to be trained;

(2) Hands-on and classroom instruction that addresses, at a minimum, initial and refresher training in the topics listed in paragraphs (f)(2)(i) through (2)(viii) of this section.

(i) Surface prep.

(ii) Spray gun set up and operation and spray technique for different types of coatings to improve transfer efficiency and minimize coating usage and overspray.

(iii) Routine spray booth and filter maintenance.

(iv) Paint mixing, matching, and applying.

(v) Solving paint application problems.

(vi) Finish defects causes and cures.

(vii) Safety precautions.

(viii) Environmental compliance.

(3) A description of the methods to be used at the completion of initial or refresher training to demonstrate, document, and provide certification of successful completion of the required training.

(g) As required by paragraph (e)(1) of this section, all new and existing personnel at an affected miscellaneous surface coating source, including contract personnel, who spray apply surface coatings must be trained by the dates specified in paragraphs (g)(1) and (2).

(1) If your source is a new source, all personnel must be trained and certified no later than 60 days after hiring or no later than 60 days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later. Painter training that was completed within 5 years prior to the date training is required, and that meets the requirements specified in paragraph (f)(2) of this section satisfies this requirement and is valid for a period not to exceed 5 years after the date the training is completed.

(2) If your source is an existing source, all personnel must be trained and certified no later than the compliance date specified in § 63.11172(b). Painter training that was completed within 5 years prior to the date training is required, and that meets the requirements specified in paragraph (f)(2) of this section satisfies this requirement and is valid for a period not to exceed 5 years after the date the training is completed.

(3) Training and certification will be valid for a period not to exceed 5 years after the date the training is completed, and all personnel must receive refresher training that meets the requirements of this section and be re-certified every 5 years.

§ 63.11174 What parts of the General Provisions apply to me?

Table 1 of this subpart shows which parts of the General Provisions in subpart A of this part apply to you.

Notifications, Reports, and Records

§ 63.11175 What notifications must I submit?

(a) Initial Notification. If you are the owner or operator of a paint stripping operation using paint strippers containing MeCl and/or a miscellaneous surface coating operation, you must submit the Initial Notification required by § 63.9(b) for a new affected source no later than 120 days after initial startup or [DATE 120 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later. For an existing affected source, you must submit the Initial Notification no later than [DATE

1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. Your Initial Notification must provide the information specified in paragraphs (a)(1) through (6) of this section.

(1) The name, address, phone number and e-mail address of the owner and operator;

(2) The address (physical location) of the affected source;

(3) An identification of the relevant standard (i.e., this subpart);

(4) A brief description of the type of operation. For example:

(i) For miscellaneous parts and products, identify whether the substrate is metal, plastic, or a combination of metal and plastic, brief characterization of the types of products (e.g., aerospace components, sports equipment, etc.) number of spray booths, and number of painters usually employed at the operation; and

(ii) For motor vehicle or mobile equipment finishing or refinishing, identify the type of operation (e.g., original equipment manufacturer, collision repair facility, production paint shop performing complete paint jobs, automobile restoration or customizing shop, mobile equipment repair and refinishing operation), number of spray booths, number of preparation stations, and number of painters usually employed at the operation.

(5) If a paint stripping operation uses 150 gallons of paint strippers containing MeCl they must submit a written MeCl minimization plan in accordance with § 63.11173(b).

(6) If a paint stripping operation uses less than 150 gallons of paint strippers containing MeCl and chooses not to develop and implement a written MeCl minimization plan in accordance with § 63.11173(b), you must submit a statement signed by a responsible official that certifies the paint stripping operation will not use more than 150 gallons of paint strippers containing MeCl during any calendar year in the future.

(b) Notification of Compliance Status. If you are the owner or operator of an existing affected paint stripping source that annually uses more than 150 gallons of paint strippers containing MeCl or an existing affected coating source, you must submit a Notification of Compliance Status on or before [DATE 2 YEARS AND 60 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**]. If you are the owner or operator of a new affected paint stripping source that annually uses more than 150 gallons of paint strippers containing MeCl or a new affected coating source, you must submit a Notification of Compliance Status within 120 days after initial startup, or by [DATE 120 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later. You are required to submit the information specified in paragraphs (b)(1) through (3) of this section with your Notification of Compliance Status:

(1) Your company's name and address.

(2) A statement by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart.

(3) The date of the Notification of Compliance Status.

(4) For each paint stripping affected source, you must include also the method(s) of paint stripping employed and the annual usage of paint strippers containing MeCl for each of the previous 5 calendar years.

§ 63.11176 What reports must I submit?

(a) Annual Compliance Report. If you are the owner or operator of an affected paint stripping source that annually uses more than 150 gallons of paint strippers containing MeCl or an affected miscellaneous surface coating source, you are required to submit an Annual Compliance Report to the Administrator containing the information specified in paragraphs (a)(1) through (4) of this section. The annual compliance report must cover each calendar year, beginning with the remainder of the calendar year after the initial compliance date for your source.

(1) Your company's name and address.

(2) A statement by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the report, and certifying whether the source is in compliance with the paint stripping and miscellaneous surface coating standards. If the source is not in compliance, include a description of the deviations from the requirements in §§ 63.11173, 63.11174, 63.11177, and 63.11178, the time periods during which the deviations occurred, and the corrective actions taken.

(3) Date of report.

(4) If your source includes paint stripping operations, include also the method(s) of paint stripping employed at the facility during the period and annual usage of paint strippers containing MeCl for paint stripping.

(b) You must submit the annual compliance report for each calendar year no later than March 1 of the following calendar year.

(c) If you are operating under a Title V permit, certification of compliance under your permit is sufficient to meet the Annual Compliance Report requirement.

§ 63.11177 What records must I keep?

If you are the owner or operator of a miscellaneous surface coating operation, you must keep the records specified in paragraphs (a) through (d) and (g) of this section. If you are the owner or operator of a paint stripping operation, you must keep the records specified in paragraphs (e) through (g) of this section.

(a) Certification that each painter has completed the training specified in § 63.11173(f) with the date the initial training and the most recent refresher training was completed.

(b) Documentation of the filter efficiency of any spray booth exhaust filter material that is not a polyester fiber or fiberglass filter, according to the procedure in § 63.11173(e)(3)(i).

(c) Documentation from the spray gun manufacturer that each spray gun that does not meet the definition of an HVLP spray gun, electrostatic application, or air brush has been determined by the Administrator to achieve a transfer efficiency equivalent to that of an HVLP spray gun, according to the procedure in § 63.11173(e)(4).

(d) Copies of any notification submitted as required by § 63.11175 and copies of any report submitted as required by § 63.11176.

(e) Records of paint strippers containing MeCl used for paint stripping operations at your facility, including the MeCl content of the paint stripper used. Documentation needs to be sufficient to verify annual usage of paint strippers containing MeCl (e.g., material safety data sheets or other documentation provided by the manufacturer or supplier of the paint stripper, purchase receipts, records of paint stripper usage, engineering calculations).

(f) If you are a paint stripping source that annually uses more than 150 gallons of paint strippers containing MeCl, you are required to maintain a record of your current MeCl minimization plan on-site for the duration of your facility's operations.

(g) Records of any deviation from the requirements in §§ 63.11173, 63.11174, 63.11175, or 63.11176. These records must include the date and time period of the deviation, and a description of the

nature of the deviation and the actions taken to correct the deviation.

§ 63.11178 In what form and for how long must I keep my records?

If you are the owner or operator of an affected source, you must maintain copies of the records specified in § 63.11177 for a period of at least 5 years after the date of each record. Copies of records must be kept on site and in a printed or electronic form that is readily accessible for inspection for at least the first 2 years after their date, and may be kept off-site after that 2-year period.

Other Requirements and Information

§ 63.11179 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authority in § 63.11173(d)(3) and (e)(6) will not be delegated to State, local, or tribal agencies.

§ 63.11180 What definitions do I need to know?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, and in this section as follows:

Additive means a material that is added to a coating after purchase from a supplier (e.g., catalysts, activators, accelerators).

Air brush means a hand-held air-atomized spray gun intended for spot repair and graphic arts work with a paint cup capacity of no more than 1.0 fluid ounce (30 cc).

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, or oil, from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances, or paper film or plastic film which may be pre-coated with an adhesive by the film manufacturer, are not considered coatings for the purposes of this subpart.

Compliance date means the date by which you must comply with this subpart.

Dry media blasting means abrasive blasting using dry media. Dry media blasting relies on impact and abrasion to remove paint from a substrate. Typically, a compressed air stream is used to propel the media against the coated surface.

Electrostatic application means any method of coating application where an electrostatic attraction is created between the part to be coated and the atomized paint particles.

Equipment cleaning means the use of an organic solvent to remove coating residue from the surfaces of paint spray guns and other painting related equipment, including, but not limited to stir sticks, paint cups, brushes, and spray booths.

High-volume, low-pressure (HVLP) spray equipment means spray equipment that is permanently labeled as such and used to apply any coating by means of a spray gun which is designed and operated between 0.1 and 10 pounds per square inch gauge (psig) air atomizing pressure measured dynamically at the center of the air cap and at the air horns.

Initial startup means the first time equipment is brought online in a paint stripping or surface coating operation, and paint stripping or surface coating is first performed.

Materials that contain HAP or *HAP-containing materials* mean, for the purposes of this subpart, materials that contain 0.1 percent or more by mass of any individual HAP that is an OSHA-defined carcinogen as specified in 29 CFR 1910.1200(d)(4), or 1.0 percent or more by mass for any other individual HAP.

Military munitions means all ammunition products and components produced or used by or for the U.S. Department of Defense (DoD) or for the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the National Nuclear Security Administration (NNSA), U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DoD components, including bulk explosives and chemical warfare agents, chemical munitions, biological weapons, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, nonnuclear components of nuclear weapons, wholly inert ammunition products, and all devices and components of any items listed in this definition.

Miscellaneous parts and/or products means any part or product made of metal or plastic, or combinations of metal and plastic. Miscellaneous parts and/or products include, but are not limited to, metal and plastic components of the following types of products as well as the products themselves: Motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; automobiles and light duty trucks at automobile and light duty truck assembly plants; boats; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products.

Miscellaneous surface coating operation means the collection of equipment used to apply surface coating to miscellaneous parts and/or products or to finish or refinish motor vehicles or mobile equipment including applying cleaning solvents to prepare the surface before coating application, mixing coatings before application, applying coating to a surface, drying or curing the coating after application, and cleaning coating application equipment, but not plating. A single surface coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating material is applied to a given part. A surface coating operation includes all other steps (such as surface preparation with solvent and equipment cleaning) in the affected source where HAP are emitted from the coating of a part. The use of solvent to clean parts (for example, to remove grease during a mechanical repair) does not constitute a miscellaneous surface coating operation if no coatings are applied. A single affected source may have multiple surface coating operations. Coating application with air brush, non-refillable handheld aerosol cans, touch-up markers, or marking pens is not a

miscellaneous surface coating operation for the purposes of this subpart.

Mobile equipment means any device that may be drawn and/or driven on a roadway including, but not limited to, heavy-duty trucks, truck trailers, fleet delivery trucks, buses, mobile cranes, bulldozers, street cleaners, agriculture equipment, motor homes, and other recreational vehicles (including camping trailers and fifth wheels).

Motor vehicle means any self-propelled vehicle, including, but not limited to, automobiles, light duty trucks, golf carts, vans, and motorcycles.

Non-HAP solvent means, for the purposes of this subpart, a solvent (including thinners and cleaning solvents) that contain less than 0.1 percent by mass of any individual HAP that is an OSHA-defined carcinogen as specified in 29 CFR 1910.1200(d)(4) and less than 1.0 percent by mass for any other individual HAP.

Paint stripping and/or miscellaneous surface coating source or facility means any shop, business, location, or parcel of land where paint stripping or miscellaneous surface coating operations are conducted.

Paint stripping means the removal of dried coatings from wood, metal, plastic, and other substrates. A single affected source may have multiple paint stripping operations.

Painter means any facility personnel who apply coating materials.

Plastic refers to substrates containing one or more resins and may be solid, porous, flexible, or rigid.

Protective oil means organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Solvent means a fluid containing organic compounds used to perform paint stripping, surface prep, or cleaning of surface coating equipment.

Spot repair means the repair of the finish on motor vehicles, mobile equipment, or associated parts or components that is less than 1 square foot in area.

Surface preparation or *Surface prep* means use of a cleaning material on a portion of or all of a substrate prior to the application of a coating.

Transfer efficiency means the amount of coating solids adhering to the object being coated divided by the total amount of coating solids sprayed, expressed as a percentage. Coating solids means the nonvolatile portion of the coating that makes up the dry film.

Truck bed liner coating means any coating, excluding color coats, labeled and formulated for application to a truck bed to protect it from surface abrasion.

TABLE 1 TO SUBPART HHHHHH OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHHH OF PART 63

Citation	Subject	Applicable to Subpart HHHHHH	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability of subpart HHHHHH is also specified in § 63.11170.
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	Yes	§ 63.11170(e) of Subpart HHHHHH exempts area sources from the obligation to obtain Title V operating permits.
§ 63.1(c)(5)	Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program to Major Sources Before Relevant Standard is Set.	No	§ 63.11170(e) of Subpart HHHHHH exempts area sources from the obligation to obtain Title V operating permits.
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.11180.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5	Construction/Reconstruction of major sources	No	Subpart HHHHHH applies only to area sources.
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	§ 63.11172 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	§ 63.11172 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No	No startup, shutdown, and malfunction plan is required by subpart HHHHHH.
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes.	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart HHHHHH does not establish opacity or visible emission standards.
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7	Performance Testing Requirements	No	No performance testing is required by subpart HHHHHH.
§ 63.8	Monitoring Requirements	No	Subpart HHHHHH does not require the use of continuous monitoring systems.
§ 63.9(a)–(d)	Notification Requirements	Yes	§ 63.11175 specifies notification requirements.

TABLE 1 TO SUBPART HHHHHH OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHHH OF PART 63—Continued

Citation	Subject	Applicable to Subpart HHHHHH	Explanation
§ 63.9(e)	Notification of Performance Test	No	Subpart HHHHHH does not require performance tests.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test	No	Subpart HHHHHH does not have opacity or visible emission standards.
§ 63.9(g)	Additional Notifications When Using CMS	No	Subpart HHHHHH does not require the use of continuous monitoring systems.
§ 63.9(h)	Notification of Compliance Status	No	§ 63.11175 specifies the dates and required content for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in § 63.11177.
§ 63.10(b)(2)(i)–(xi)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	No	Subpart HHHHHH does not require startup, shutdown, and malfunction plans, or CMS.
§ 63.10(b)(2)(xii)	Waiver of recordkeeping requirements	Yes.	
§ 63.10(b)(2)(xiii)	Alternatives to the relative accuracy test	No	Subpart HHHHHH does not require the use of CEMS.
§ 63.10(b)(2)(xiv)	Records supporting notifications	Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)	Additional Recordkeeping Requirements for Sources with CMS.	No	Subpart HHHHHH does not require the use of CMS.
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.11176.
§ 63.10(d)(2)–(3)	Report of Performance Test Results, and Opacity or Visible Emissions Observations.	No	Subpart HHHHHH does not require performance tests, or opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports	No	Subpart HHHHHH does not require startup, shutdown, and malfunction reports.
§ 63.10(e)	Additional Reporting requirements for Sources with CMS.	No	Subpart HHHHHH does not require the use of CMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart HHHHHH does not require the use of flares.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses of State Air Pollution Control Agencies and EPA Regional Offices.	Yes.	
§ 63.14	Incorporation by Reference	Yes	Test methods for measuring paint booth filter efficiency and spray gun transfer efficiency in § 63.11173(e)(2) and (4) are incorporated and included in § 63.14.
§ 63.15	Availability of Information/Confidentiality	Yes.	
§ 63.16(a)	Performance Track Provisions—reduced reporting.	Yes.	
§ 63.16(b)–(c)	Performance Track Provisions—reduced reporting.	No	Subpart HHHHHH does not establish numerical emission limits.

[FR Doc. E7–17973 Filed 9–14–07; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0359; FRL–8466–7]

RIN 2060–AM36

National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing national emission standards for hazardous air pollutants for two area source categories (iron foundries and steel foundries). The proposed requirements for the two area source categories are combined in one subpart. The proposed rule establishes different requirements for foundries based on size. Small iron and steel foundries would be required to comply with pollution prevention management practices for metallic scrap, the removal of mercury switches, and binder formulations. Large iron and steel foundries would be required to comply with the same pollution prevention management practices as small foundries in addition to emissions limitations for melting furnaces and foundry operations. EPA is also co-proposing two alternatives. One alternative would set a higher size threshold for large foundries. The second alternative proposes that all iron and steel foundries comply with the pollution prevention management practices for metallic scrap, the removal of mercury switches, and binder formulations. The proposed standards reflect the generally achievable control technology and/or management practices for each subcategory.

DATES: Comments must be received on or before October 17, 2007, unless a public hearing is requested by September 27, 2007. If a hearing is requested on this proposed rule, written comments must be received by November 1, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before October 17, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0359, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Area Source NESHAP for Iron and Steel Foundries Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0359. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the NESHAP for Iron and Steel Foundries Area Sources Docket, at the EPA Docket and Information Center, 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: Mr. Conrad Chin, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–1512; fax number: (919) 541–3207; e-mail address: *chin.conrad@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

I. General Information
  A. Does this action apply to me?
  B. What should I consider as I prepare my comments to EPA?
  C. Where can I get a copy of this document?
  D. When would a public hearing occur?
II. Background Information for This Proposed Rule
  A. What is the statutory authority for NESHAP?
  B. What area source categories are affected by the proposed NESHAP?
  C. What are the processes and emissions sources at iron and steel foundries?
III. Summary of This Proposed Rule
  A. What are the applicability provisions and compliance dates?
  B. What emissions standards are in the form of pollution prevention management practices?
  C. What are the requirements for small iron and steel foundries?
  D. What are the requirements for large iron and steel foundries?
IV. Rationale for This Proposed Rule
  A. How did EPA subcategorize iron and steel foundries?
  B. What is the performance of control technologies for metal melting furnaces?
  C. How did EPA determine the GACT requirements for metal HAP from small iron and steel foundries?
  D. How did EPA determine the GACT requirements for metal HAP from large iron and steel foundries?
  E. How did EPA determine the GACT requirements for organic HAP from iron and steel foundries?
  F. How did EPA select the proposed compliance requirements?
V. Summary of Impacts of This Proposed Rule

VI. Proposed Exemption From Title V Permit Requirements
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
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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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

The regulated category and entities potentially affected by this proposed action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331511	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers.
	331512	Steel investment foundries.
	331513	Steel foundries (except investment).

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.10880 of subpart ZZZZZ (National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA–HQ–OAR–2006–0359. 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.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through EPA's Technology Transfer Network (TTN). A copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning this proposed rule by September 27, 2007, we will hold a public hearing on October 2, 2007. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for This Proposed Rule

A. What is the statutory authority for NESHAP?

Section 112(d) of the Clean Air Act (CAA) requires us to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of hazardous air pollutants (HAP) that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 air toxics that pose the greatest potential health threat in urban areas, and section 112(c)(3) requires EPA to regulate the area source categories that represent 90 percent of the emissions of the 30 ''listed'' air toxics. We implement these requirements through the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

We added iron foundries and steel foundries to the Integrated Urban Air Toxics Strategy Area Source Category List on June 26, 2002 (67 FR 43113). The inclusion of these two source categories to the section 112(c)(3) area source category list is based on EPA's use of 1990 as the baseline year for that listing. Both of these source categories were listed as contributing a percentage of the total area source emissions for the following ''urban'' HAP: Compounds of chromium, lead, manganese, and nickel.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.'' Additional information on the definition of generally available control technology (GACT) is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which indicates GACT means:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories that may have few establishments and many small businesses.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

Iron and steel foundries may emit small quantities of mercury compounds, dioxins, and HAP organics from furnaces that melt scrap containing tramp materials such as mercury switches and chlorinated plastics. Organic HAP emissions also result from the use of binder and coating formulations that contain HAP components. As a result, we are proposing pollution prevention management practices for the control of HAP (organics, metal compounds, and mercury) in the charge materials used by iron and steel foundries. Another pollution prevention management practice would require the use of non-methanol binder formulations in certain applications. We are also proposing that foundries keep a record of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records may assist area source foundry owners or operators in their pursuit of pollution prevention opportunities.

We are proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for 10 source categories listed pursuant to section 112(c)(3) and (k) by December 15, 2007 (*Sierra Club* v. *U.S. Environmental Protection Agency,* no. 01–1537, D.D.C., March 2006). Other rulemakings will include standards for the remaining source categories.

B. What area source categories are affected by the proposed NESHAP?

The Iron Foundries area source category includes any facility engaged in the production of final shape castings from grades of iron. The Steel Foundries area source category includes any facility engaged in producing final shape steel castings by the melting, alloying, and molding of pig iron and steel scrap. The proposed area source NESHAP combines the requirements for both area source categories into one rule because the processes are similar and many foundries produce both iron and steel castings.

The U.S. Census Bureau industry statistics indicate that there were 1,015 ferrous foundries operating in the U.S. in 2002. In 1998, we conducted a detailed survey of all known iron and steel foundries and received responses from approximately 600 foundries. This list of 600 foundries was updated in 2006 based on information received from the industry trade organization and through direct contact with foundry owners and operators; numerous foundries closed between 1998 and 2006. Based on this information, we have detailed, process-specific information on approximately 510 iron and steel foundries that are currently operating in the United States. Approximately 80 of these facilities are major sources subject to the NESHAP for Iron and Steel Foundries in 40 CFR part 63, subpart EEEEE. We have identified a total of 427 iron and steel foundries that are area sources and for which we have detailed data.

Based on a comparison of the Census Bureaus statistics, the detailed industry survey responses, and the trends in the iron and steel foundry industry, we estimate that there may be up to 300 additional iron and steel foundries operating in the United States for which we do not have information regarding their process operations. We expect that the vast majority of these foundries are small operations with melt production less than 10,000 tpy.

Based on the updated industry database, area source iron and steel foundries are located in 43 of the contiguous 48 States; 27 of these States have at least 5 iron and steel foundries. The States that have the greatest number of area source iron and steel foundries include Ohio, Pennsylvania, Wisconsin, and California; each of these States has more than 30 iron and steel foundries. A few of the States have regulations for particulate matter (PM) that impact iron and steel foundry operations. The State and local regulations often have a sliding scale that allows small melting capacity furnaces to have much higher PM emission per ton of metal melted than larger furnaces.

C. What are the processes and emissions sources at iron and steel foundries?

Iron and steel foundries manufacture castings by pouring molten iron or steel melted in a furnace into a mold of a desired shape. The primary processing units of interest at iron and steel foundries, because of their potential to generate metal HAP emissions, are metal melting furnaces. HAP metal compounds may also be emitted from a variety of ancillary sources at the foundry such as metal inoculation, pouring, and grinding stations. Iron and steel foundries may also release organic HAP from cooling and shakeout lines, mold and core making lines, and mold and core coating lines, depending on the type of molding system and chemical binders used.

There are three primary types of furnaces used to melt scrap metal at iron and steel foundries—cupolas, electric arc furnaces (EAF), and electric induction furnaces (EIF). Cupolas are used exclusively to produce molten iron; EAF are used predominately to produce molten steel, but are used at a few iron and steel foundries to produce molten iron. EIF are used to produce either molten iron or molten steel. Cupolas and EAF typically have larger melting capacities than EIF; the vast majority of area source iron and steel foundries use EIF.

Cupolas are continuous blast furnaces. Almost all emissions from a cupola are contained in the flow of air exiting the stack of the furnace, which contains PM and organic compounds in addition to carbon monoxide (CO). The metal HAP in PM emissions from cupolas are primarily compounds of lead and manganese, with other HAP such as compounds of cadmium, chromium, mercury, and nickel present in lesser amounts. These HAP originate as impurities or trace elements in the scrap metal fed to the furnace. Most cupolas control PM emissions by dedicated baghouses or wet scrubbers.

EAF and EIF metal melting furnaces operate in batch mode; an operating cycle consisting of charging, melting, backcharging (in some cases), and tapping. PM emissions from EAF and EIF contain similar HAP metal compounds as cupola furnaces, but may also contain significant amounts of compounds of chromium or nickel if stainless steel or nickel alloy castings are produced. Emissions from EIF are often uncontrolled, but baghouses, cyclones, and wet scrubbers are used to control PM emissions from EIF at

certain iron and steel foundries. PM emissions from EAF are typically controlled by baghouses.

Other potential emission sources of HAP metals at iron and steel foundries include inoculation, pouring, and grinding stations. The total quantity of metal HAP emitted from these sources is small in comparison with the emissions from the metal melting furnaces. Capture and control of inoculation and pouring emissions are difficult due to the need to access the molten metal during these operations. Consequently, inoculation and pouring emissions are typically fugitive emission sources within the foundry. Metal grinding typically generates coarse PM emissions, which are often captured and controlled to improve the workplace environment. This coarse PM does not pose a significant air emission source, as these particles do not generally transport from the foundry building.

The majority of organic HAP emissions from iron and steel foundry operations are organic HAP contained in either chemical binder or coating formulations that may partially evaporate or are otherwise emitted during the chemical application process. Organic HAP are also generated by incomplete combustion of organic material in the mold and core sand, such as binder chemicals and seacoal, when molten metal comes into contact with organic materials.

III. Summary of This Proposed Rule

This section presents a summary of the requirements of this proposed rule and proposed regulatory alternatives. Additional details and the rationale for the proposed requirements are provided in section IV of this preamble.

A. What are the applicability provisions and compliance dates?

The NESHAP would apply to each new and existing iron and steel foundry that is an area source. The compliance dates for existing area source standards would depend on whether the foundry is determined to be small or large. We are proposing to define a ''small iron and steel foundry'' as an iron and steel foundry that has an annual metal melt production of 10,000 tons or less. An iron and steel foundry that has an annual metal melt production greater than 10,000 tons would be classified as a large foundry.

Each foundry would determine its initial classification as a small or large foundry using production data for calendar year 2008. All foundries would be required to comply with the pollution prevention management practices for metallic scrap, removal of mercury switches, and binder formulations no later than 1 year after the date of publication of the final rule in the **Federal Register**. A large foundry would be required to comply with applicable emissions limitations and operation and maintenance requirements no later than 2 years after initial classification.[1] The owner or operator of a new area source foundry would be required to comply with the rule requirements by the date of publication of the final rule in the **Federal Register** or upon startup, whichever is later.

After the initial classification, a small foundry that exceeds the 10,000 ton annual production threshold during the preceding calendar year must notify the Administrator and comply with the applicable requirements for a large foundry within 2 years. For example, if a small foundry produces more than 10,000 tons of melted metal from January 1 through December 31, 2009, that foundry would be required to comply with the requirements for a large foundry by January 2012. If a facility is initially classified as a large foundry (or a small foundry becomes a large foundry), that facility must meet the applicable requirements for a large foundry for at least 3 years, even if its annual production falls below 10,000 tons of melted metal. After 3 years, the foundry may reclassify the facility as a small foundry provided the annual production for the preceding calendar year was 10,000 tons of melted metal or less. A large foundry that becomes small must notify the Administrator and comply with the applicable requirements for small foundries immediately. If a large foundry becomes small and then its production exceeds 10,000 for a subsequent calendar year, the foundry must notify the Administrator and comply with the applicable requirements for large foundries immediately.

We are also co-proposing an alternative plant size threshold that would define a ''small iron and steel foundry'' as an iron and steel foundry that has an annual metal melt production of 15,000 tons or less. An iron and steel foundry that has an annual metal melt production greater than 15,000 tons would be classified as a large foundry. The proposed rule requirements under this alternative plant size threshold would not differ from the proposed rule requirements described above.

B. What emissions standards are in the form of pollution prevention management practices?

1. Metallic Scrap

The proposed material specification requirements are based on pollution prevention and require removal of HAP-generating materials from metallic scrap before melting. All foundries would prepare and operate according to written material specifications for one of two equivalent compliance options.

One compliance option would require foundries to prepare and operate pursuant to written material specifications for the purchase and use of only metal ingots, pig iron, slitter, or other materials that do not include metallic scrap from motor vehicle bodies, engine blocks, oil filters, oily turnings, lead components, chlorinated plastics, or free liquids. The term ''free liquids'' is defined as material that fails the paint filter test by EPA Method 9095B (incorporated by reference—see 40 CFR 63.14) in EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods''.

The second compliance option would require foundries to prepare and operate pursuant to written material specifications for the purchase and use of scrap that has been depleted (to the extent practicable) of organics and HAP metals in the charge materials used by the foundry. For scrap charged to a scrap preheater or metal melting furnace that is not equipped with an afterburner, the materials specifications must include requirements for metal scrap to be depleted (to the extent practicable) of used oil filters, chlorinated plastic parts, accessible lead-containing components, and free liquids. For scrap charged to a cupola metal melting furnace that is equipped with an afterburner, the material specifications must include requirements for metal scrap to be depleted (to the extent practicable) of chlorinated plastics, accessible lead-containing components, and free liquids.

Either material specification option will achieve a similar HAP reduction impact. Foundries may have certain scrap subject to one option and other scrap subject to another option provided the metallic scrap remains segregated until charge make-up.

2. Mercury Switch Removal

The proposed standards for mercury are based on pollution prevention and require a foundry owner or operator who melts scrap from motor vehicles

[1] If additional time is needed to install controls, the owner or operator of an existing source can, pursuant to 40 CFR 63.6(i)(4), request from the permitting authority up to a 1-year extension of the compliance date. See CAA section 112(i)(3)(B).

either to purchase (or otherwise obtain) the motor vehicle scrap only from scrap providers participating in an EPA-approved program for the removal of mercury switches or to fulfill the alternative requirements described below. Foundries participating in an approved program must maintain records identifying each scrap provider and documenting the scrap provider's participation in the EPA-approved mercury switch removal program. A proposed equivalent compliance option is for the foundry to prepare and operate pursuant to an EPA-approved site-specific plan that includes specifications to the scrap provider that mercury switches must be removed from motor vehicle bodies at an efficiency comparable to that of the EPA-approved mercury switch removal program (see below). An equivalent compliance option is provided for facilities that do not use motor vehicle scrap that contains mercury switches.

We expect most facilities that use motor vehicle scrap will choose to comply by purchasing motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator. The National Vehicle Mercury Switch Recovery Program (NVMSRP) [2] would be an approved program under this proposed standard. Facilities choosing to use the NVMSRP as a compliance option would have to assume all of the responsibilities for steelmakers as described in the Memorandum of Understanding.

Foundries could also obtain scrap from scrap providers participating in other programs. To do so, the facility owner or operator would have to submit a request to the Administrator for approval to comply by purchasing scrap from scrap providers that are participating in another switch removal program and demonstrate to the Administrator's satisfaction that the program meets the following specified criteria: (1) There is an outreach program that informs automobile dismantlers of the need for removal of mercury switches and provides training and guidance on switch removal, (2) the program has a goal for the removal of at least 80 percent of the mercury switches, and (3) the program sponsor must submit annual progress reports on the number of switches removed and the estimated number of motor vehicle bodies processed (from which a percentage of switches removed is easily derivable).

Facilities that purchase motor vehicle scrap from scrap providers that do not participate in an EPA-approved mercury switch removal program would have to prepare and operate pursuant to and in conformance with a site-specific plan for the removal of mercury switches, and the plan must include provisions for obtaining assurance from scrap providers that mercury switches have been removed. The plan would be submitted to the Administrator for approval and would demonstrate how the facility will comply with specific requirements that include: (1) A means of communicating to scrap purchasers and scrap providers the need to obtain or provide motor vehicle scrap from which mercury switches have been removed and the need to ensure the proper disposal of the mercury switches, (2) provisions for obtaining assurance from scrap providers that motor vehicle scrap provided to the facility meets the scrap specifications, (3) provisions for periodic inspection, site visits, or other means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap, (4) provisions for taking corrective actions if needed, and (5) requiring each motor vehicle scrap provider to provide an estimate of the number of mercury switches removed from motor vehicle scrap sent to the facility during the previous year and the basis for the estimate. The Administrator would be able to request documentation or additional information from the owner or operator at any time. The site-specific plan must establish a goal for the removal of at least 80 percent of the mercury switches. All documented and verifiable mercury-containing components removed from motor vehicle scrap would count towards the 80 percent goal.

An equivalent compliance option would be provided for foundries that do not utilize motor vehicle scrap that contains mercury. The option would require the facility to certify that the only materials they are charging from motor vehicle scrap are materials recovered for their specialty alloy content, such as chromium in certain exhaust systems, and these materials are known not to contain mercury.

Records would be required to document conformance with the material specifications for metallic scrap, restricted scrap, and mercury switches. Each foundry would be required to submit semiannual reports that clearly identify any deviation from the scrap management requirements. These reports can be submitted as part of the semiannual reports required by 40 CFR 63.10 of the general provisions.

3. Binder Formulations

For each furfuryl alcohol warm box mold or core making line, new and existing foundries would be required to use a binder chemical formulation that does not use methanol as a specific ingredient of the catalyst formulation. This requirement would not apply to the resin portion of the binder system. This proposed rule includes recordkeeping requirements to document conformance with this requirement.

C. What are the requirements for small iron and steel foundries?

This proposed rule requires small iron and steel foundries to comply with the pollution prevention management practices for metallic scrap, mercury switches, and binder formulations described above. The owner or operator would be required to submit an initial notification of applicability no later than 120 calendar days after the final rule is published in the **Federal Register** (or within 120 days after the foundry becomes subject to the standard; see 40 CFR 63.9(b)(2)). The foundry would also be required to submit an initial written notification to the Administrator that identifies their facility as a small (or large) foundry; this notification would be due no later than 1 year after the date of publication of the final rule in the **Federal Register**. Subsequent notifications would be required within 30 days for a change in process or operations that reclassifies the status of the facility and its compliance obligations. A small foundry would also be required to submit a notification of compliance status according to the requirements in 40 CFR 63.9(h) of the General Provisions (40 CFR part 63, subpart A). The notification of compliance status would include certifications of compliance for the pollution prevention management practices. This proposed rule also requires small foundries to keep records of monthly metal melt production and report any deviation from the pollution prevention management practices in the semiannual report required by 40 CFR 63.10 of the NESHAP general provisions.

We are also proposing to require small foundries to keep a record of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records must be copies of

[2] For details see: *http://www.epa.gov/mercury/switch.htm*. In particular, see the signed Memorandum of Understanding.

purchasing records, Material Data Safety Sheets, or other documentation that provide information on binder materials. The purpose of this requirement is to encourage foundries to investigate and use nonHAP binder and coating materials wherever feasible.

D. What are the requirements for large iron and steel foundries?

This proposed NESHAP requires large iron and steel foundries to comply with the pollution prevention management practices described in section III.B of this preamble. In addition, large iron and steel foundries would be required to operate capture and collection systems for metal melting furnaces and comply with emissions limitations, operation and maintenance, monitoring, testing, and recordkeeping and reporting requirements. We are also co-proposing an alternative under which we would not subcategorize between large and small foundries. Under this alternative, all foundries would be required to comply with the pollution prevention management practices described in section III.B of this preamble, but no foundries would be subject to the requirements described in section III.D of this preamble, such as the requirements for capture and collection systems, emissions limitations, and associated monitoring, recordkeeping, and reporting.

1. Emissions Limitations

Large foundries would be required to comply with emissions limits for metal melting furnaces. A metal melting furnace includes cupolas, EAF, EIF, or other similar devices (excluding holding furnaces, argon oxygen decarburization vessels, or ladles that receive molten metal from a metal melting furnace, to which metal ingots or other materials may be added to adjust the metal chemistry). The proposed emissions limits for metal melting furnaces are:

- 0.8 pounds of PM per ton of metal melted (lb/ton of PM) or 0.06 pounds of total metal HAP per ton of metal melted (lb/ton of total metal HAP) for each metal melting furnace at an existing iron and steel foundry.
- 0.1 lb/ton of PM or 0.008 lb/ton of total metal HAP for each metal melting furnace at a new iron and steel foundry.

The owner or operator of a foundry may choose to comply with these emissions limits utilizing emissions averaging as specified in this proposed rule so that the production-weighted average emissions from all metal melting furnaces at the foundry for any calendar month meet the applicable emissions limit.

Operating parameter limits would apply to the control device applied to emissions from a metal melting furnace. For a wet scrubber, a foundry would maintain the 3-hour average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial or subsequent performance test. For an electrostatic precipitator, a foundry would maintain the voltage and secondary current (or total power input) to the control device at or above the level established during the initial or subsequent performance test. For a baghouse, a foundry would maintain the pressure drop across each baghouse cell within the range established during the initial or subsequent performance test.

The proposed NESHAP also includes a fugitive emissions opacity limit of 20 percent for each building or structure housing iron and steel foundry operations. Foundry operations covered by the fugitive emissions opacity limit would include all process equipment and practices used to produce metal castings for shipment including mold or core making and coating; scrap handling and preheating; metal melting and inoculation; pouring, cooling, and shakeout; shotblasting, grinding and other metal finishing operations; and sand handling.

2. Operation and Maintenance Requirements

The owner or operator would be required to prepare and operate by an operation and maintenance (O&M) plan for each control device used to comply with the standards. Any other O&M, preventative maintenance, or similar plan which satisfies the specified requirements could be used to comply with the requirements for an O&M plan.

3. Monitoring Requirements

We are proposing that large iron and steel foundries install and operate continuous parameter monitoring systems (CPMS) to measure and record operating parameters of wet scrubbers used to comply with PM or total metal HAP emissions limit. For electrostatic precipitators, the owner or operator may measure and record the voltage and secondary current (or total power input) using a CPMS or manually record the parameter(s) at least once a shift. For baghouses, the owner or operator of an existing foundry would conduct periodic baghouse inspections and manually check and record the pressure drop across each baghouse cell at least once a day or measure and record the pressure drop using a CPMS. All CPMS would be operated and maintained according to the O&M plan.

As an alternative means of compliance, the owner or operator of an existing area source can use a bag leak detection system to demonstrate continuous compliance with a PM or total metal HAP emissions limit. Bag leak detection systems are required for positive or negative pressure baghouses at a new area source foundry. If a bag leak detection system is used, the owner or operator must prepare and operate pursuant to a monitoring plan for each bag leak detection system; specific requirements for the plan are included in this proposed rule. For additional information on bag leak detection systems that operate on the triboelectric effect, see ''Fabric Filter Bag Leak Detection Guidance'', U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1997, EPA–454/R–98–015, National Technical Information Service (NTIS) publication number PB98164676. This document is available from the NTIS, 5385 Port Royal Road, Springfield, VA 22161.

Monthly inspections of the equipment that is important to the performance of the capture system are also required. The owner or operator must repair any defect or deficiency in the capture system before the next scheduled inspection and record the results of each inspection and the date of any repair.

If a large foundry complies with the emissions limits for furnaces using emissions averaging, the proposed NESHAP requires the owner or operator to demonstrate compliance on a monthly basis. The facility would determine the weighted average emissions from all metal melting furnaces at the foundry using an equation included in this proposed rule. The owner or operator would maintain records of the monthly calculations and report any exceedance in the semiannual report.

4. Performance Tests

We propose that each large foundry conduct a performance test to demonstrate initial compliance with the PM or total metal HAP emissions limit and the opacity limit for fugitive emissions within 180 days of promulgation and submit the results in the notification of compliance status. In lieu of conducting an initial performance test to demonstrate compliance with the applicable PM or total metal HAP limit for metal melting furnaces, the owner or operator of an existing foundry would be allowed to submit the results of a previous performance test provided the test was conducted within the last 5 years using the methods and procedures specified

in the rule and either no process changes have been made since the test, or the test results reliably demonstrate compliance despite process changes. If the owner or operator does not have a previous performance test that meets the rule requirements, a test must be conducted within 180 days of the compliance date. Performance tests would be required for all new area source foundries. Subsequent tests for furnaces would be required every 5 years and each time an operating limit is changed or a process change occurs that is likely to increase metal HAP emissions from the furnace. Provisions are included in this proposed rule for determining compliance with PM or total metal HAP emissions limits in a lb/ton of metal melted format and for establishing control device operating parameter limits. This proposed rule also includes requirements to perform visual opacity testing every 6 months. This proposed rule describes the methods and requirements for these semiannual opacity observations.

5. Recordkeeping and Reporting Requirements

The owner or operator would be required to submit an initial notification that identifies the facility as a large (or small) foundry. In addition, the owner or operator would be required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 3 of this proposed rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting, including provisions for a startup, shutdown, and malfunction plan/reports required by 40 CFR 63.6(e). In addition to the records required by 40 CFR 63.10, all foundries would be required to maintain records to document conformance with the pollution prevention management practice emissions standards for metallic scrap, mercury switch removal, and binder formulations as well as to maintain records of annual melt production and corrective action(s). Large foundries must also prepare and operate according to the O&M plan and record monthly compliance calculations for metal melting furnaces that comply using emissions averaging, if applicable. The owner or operator would submit semiannual reports that provide summary information on excursions or exceedances (including the corrective action taken), monitor downtime incidents, and deviations from management practices or O&M requirements according to the requirements in 40 CFR 63.10.

We are also proposing to require all foundries to keep a record of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records must be copies of purchasing records, Material Data Safety Sheets, or other documentation that provide information on binder materials. The purpose of this requirement, among other things, is to encourage foundries to investigate and use nonHAP binder and coating materials wherever feasible.

IV. Rationale for This Proposed Rule

A. How did EPA subcategorize iron and steel foundries?

As part of the GACT analysis, we considered whether there were differences in processes, sizes, or other factors affecting emissions and control technologies that would warrant subcategorization. Under section 112(d)(1) of the CAA, EPA ''may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standards * * *''. In our review of the available data, we observed significant differences between iron and steel foundries based on the total melt production capacities of the foundry. For example, foundries with melt production quantities of 10,000 tpy or less represented over 70 percent of the facilities, but only 25 percent of the nationwide emissions. Small foundries are much more likely to use EIF; 77 percent of all area source EIF are at foundries with production of 10,000 tpy or less. On the other hand, only 37 percent of the cupolas and 28 percent of the EAF at area sources are at foundries with production of 10,000 tpy or less. Based on these differences, we determined that subcategorization of iron and steel foundries by size was justified.

We evaluated the impacts of requiring all metal melting furnaces to operate with either a wet scrubber or baghouse control system. Under this scenario, foundries with melt capacities of 10,000 tpy or less incurred 74 percent of the annualized control costs and represented over 99 percent of the foundries with annualized costs that exceeded 3 percent of sales; however, these foundries represented only 31 percent of the air emission reductions. We also evaluated the relative proportion of costs and emission reductions at size thresholds of 5,000, 15,000, and 20,000 tpy melting capacity. At lower capacity thresholds, the control costs for foundries above the threshold increased significantly while the emission reductions increased only slightly. At higher capacity thresholds, the control costs for foundries above the threshold decreased but the emissions reductions also decreased significantly. Detailed information about the costs and emission reductions at these other size thresholds is available in the docket (EPA–HQ–OAR–2006–0359). In light of the relative emissions reductions and costs for various thresholds, we determined that a 10,000 tpy facility-wide melting capacity was the appropriate threshold for subcategorizing large and small foundries.

Consequently, we are proposing to subcategorize the iron and steel foundry industry into ''small'' and ''large'' foundries. A ''small iron and steel foundry'' would be defined as an iron and steel foundry that has an annual melt production of 10,000 tpy or less. A ''large iron and steel foundry'' would be defined as an iron and steel foundry that has an annual melt production greater than 10,000 tpy. It should be noted that this designation of small and large foundries is in no way related to the definition of ''small entity'' under the Regulatory Flexibility Act. Furthermore, the term ''large'' is relative; large area source foundries may be quite small compared to foundries that are subject to the major source rule (40 CFR part 63, subpart EEEEE).

In light of limits on our information about costs, HAP emissions reductions, and foundry operations, EPA is evaluating whether, and how, to subcategorize the source categories, and what GACT is for the source categories or subcategories. Therefore, EPA is co-proposing two alternatives along with the 10,000 tpy threshold for large foundries. Under the first alternative, the threshold for large foundries would be set at 15,000 tpy. Under the second alternative, there would be no subcategorization, and all sources would be required to comply with the pollution prevention management practices described in section III.B of this preamble.

We also evaluated the different types of furnaces and are considering subcategorization based on furnace type. As the different types of melting furnaces operate differently and have their own emission characteristics, subcategorization by the type of furnace would also be justified. We subcategorized by furnace type when we promulgated the major source Iron and Steel Foundries NESHAP (40 CFR part 63 subpart EEEEE). EAF and cupolas tend to be used at the larger foundries, whereas EIF are prevalent at the smaller foundries. Additionally, EAF and

cupolas tend to have higher melting capacities than EIF, especially at the larger foundries. For example, 88 percent of all cupolas and EAF at foundries with melt production greater than 10,000 tpy have metal melting capacities of 4 tons per hour (tph) or greater, whereas only 36 percent of EIF at these large foundries have metal melting capacity of 4 tph or greater. Based on the abundance of very small EIF melting furnaces, even at large foundries, we are also considering subcategorizing the EIF metal melting furnaces into ''low capacity EIF'' and ''high capacity EIF.'' High capacity EIF would be subject to requirements similar to the large foundry requirements in section III.D of this preamble, and low capacity EIF would be treated similarly to small foundries under this proposal. The threshold for classification as a high capacity EIF would be 4 or 5 tph.

We request comment, along with supporting documentation, on these and other possible alternative subcategories based on plant size or furnace type. Supporting documentation must be provided in sufficient detail to allow characterization of the quality and representativeness of the data. We specifically request comment on the appropriateness of using a 5,000, 10,000, 15,000, or 20,000 tpy melting capacity as the plant size threshold for subcategorization. We also request comment on subcategorizing the melting furnaces by furnace type and size. Specifically, we request comment along with supporting documentation on subcategorizing EIF into low and high capacity furnaces using either a 4 or 5 tph melting capacity threshold. Based on the comments received, we may elect to subcategorize between large and small iron and steel foundries, between furnaces using alternative size thresholds, a combination of foundry size and furnace type, or we may elect not to subcategorize at all.

B. What is the performance of control technologies for metal melting furnaces?

Facility-specific and process-specific data were available for iron and steel foundries from a survey of the industry conducted in 1998. A total of 595 survey responses were originally received; the responses included the types of process units used at each foundry, the type of control device used for each process, and key design parameters of the processes and control systems. These data were updated based on additional data collected through direct facility contacts and through information provided by the industry trade organizations. After updating the data base, we have detailed information for 427 iron and steel foundries that are currently operating and that are area sources (i.e., that are not subject to the NESHAP for Iron and Steel Foundries in 40 CFR part 63, subpart EEEEE, which applies to major sources). Although this data base likely does not include every foundry in the United States, it includes a significant majority of the foundries, especially those foundries with melt production quantities of 5,000 tpy or more, and we believe it is reasonably representative of the industry's current practices and controls.

In addition to the process design information, we requested foundries that had conducted emissions tests on their foundry processes and/or control systems to submit the source test results and supporting information. Performance data were available for over 70 furnaces. Although most of these data are for larger (often major source) iron and steel foundries, these data provide a reasonable basis for assessing the performance of various control approaches for metal melting furnaces.

Metal HAP compounds from iron and steel foundries are emitted primarily from metal melting furnaces. These metal HAP compounds are released as filterable PM emissions, and conventional PM control systems can be used to significantly reduce the metal HAP emissions from iron and steel foundries. Fabric filters (baghouses or cartridge filters) and wet scrubbers are the predominant technologies used to control PM from metal melting furnaces. Fabric filter systems generally achieve higher PM emissions reductions than wet scrubbers, as applied in the iron and steel foundry industry. Fabric filter systems generally achieve 98 to 99.9 percent control efficiency. PM wet scrubbers as used in the iron and steel foundry industry are typically venturi-type wet scrubbers that achieve a PM reduction efficiency of 85 to 95 percent. Electrostatic precipitators and cyclone separators are also used at some iron and steel foundry operations to control metal melting furnace emissions. We have test data for only one ESP; its performance is comparable to the performance of wet scrubbers. Cyclone separators are used in limited applications, primarily for EIF; emission reduction efficiencies of cyclone separators are expected to be between 40 and 70 percent.

Our review of the emissions test data for metal melting furnaces showed that although the different types of melting furnaces have widely different uncontrolled emissions, the controlled emissions from the different types of metal melting furnaces were consistent between the different types of furnaces when expressed in terms of pounds of PM emitted per ton of metal charged (lb/ton). After considering the control technologies in use at area source foundries, we considered setting an emission limit at 0.8 or 0.3 lb/ton of PM (see section IV.D of this preamble for our analysis of these emission limit options). The 0.8 lb/ton of PM limit is based on the performance of a well-designed and operated wet scrubber system at area source iron and steel foundries, taking into account process and control system variability. The 0.3 lb/ton of PM limit is based on the performance of a reasonably-designed and operated fabric filter control system at area source iron and steel foundries, taking into account process and control system variability. For new sources, we also considered a PM emission limit of 0.1 lb/ton based on the performance of the best fabric filter control systems at existing large area source iron and steel foundries, taking into account process and control system variability.

In addition to these control options that are based on add-on control systems, we identified scrap management practices as a potential means of reducing HAP emissions from the metal melting furnaces. This is a pollution prevention measure that can either be applied in conjunction with add-on controls or be applied when no add-on controls are used. By reducing the amount of tramp metals and other materials in the scrap feed to the furnace, emissions of both metal HAP compounds and organic HAP can be reduced. However, it should be noted that the emissions reductions achievable by implementing scrap management as the primary HAP reduction activity are not as great as when applied in conjunction with add-on controls.

C. How did EPA determine the GACT requirements for metal HAP from small iron and steel foundries?

Based on the considerations of what constitutes GACT as described in section II.A of this preamble, we identified and evaluated three emissions control options for small iron and steel foundries. Option 1 is the use of scrap management practices alone. Option 2 is the use of a management system that includes scrap management practices and developing and implementing operation and maintenance plans, and meeting building opacity limits. Thus, Option 2 is aimed at reducing emissions of ancillary sources at the iron and steel foundry in addition to the metal melting furnaces. Option 3 is the enhanced management system in conjunction with

a PM emissions limit of 0.8 lb/ton for the metal melting furnaces. Table 1 of this preamble summarizes the impacts of these candidate control options for iron and steel foundries having a production capacity of 10,000 tpy or less.

TABLE 1.—NATIONAL IMPACTS OF GACT OPTIONS FOR EXISTING IRON AND STEEL FOUNDRIES WITH ANNUAL MELT PRODUCTION OF 10,000 TPY OR LESS [1]

Option	Total capital cost, $ (millions)	Total annual cost, $/yr (millions)	Emissions reduction, (tons PM/yr)	Cost effectiveness ($/ton PM)		Number of foundries impacted greater than 3% of revenues
				Overall	Incremental	
(A) Impacts in terms of metal HAP emissions reduction						
1	.....	0.19	0.75	250,000	.....	0
2	.....	0.50	1.35	370,000	520,000	8
3	135	29.3	22.6	1,300,000	1,400,000	148

Option	Total capital cost, $ (millions)	Total annual cost, $/yr (millions)	Emission reductions, (tons metal HAP/year)	Cost effectiveness ($/ton mental HAO)		Number of foundaries impacted greater than 3% of revenues
				Overall	Incremental	
(B) Impacts in terms of PM emissions reduction						
1	.....	0.19	16	12,000	.....	0
2	.....	0.50	36	14,000	16,000	8
3	135	29.3	480	61,000	65,000	148

[1] Costs are in 2005 dollars.

The results for Option 3, as presented in Table 1 of this preamble, indicate that add-on controls are not cost-effective and impose undue economic burden for the small iron and steel foundry subcategory. While the cost-effectiveness values for the two management practice options are similar, eight foundries (all of which are small entities) have cost impacts greater than 3 percent of their revenue under Option 2. Although not presented in Table 1 of this preamble, the management practices represented by Option 2 also impose compliance costs that are between 1 and 3 percent of sales for an additional 13 iron and steel foundries, whereas the scrap management practices represented by Option 1 do not result in any impacts that exceed 1 percent of revenue. Furthermore, the PM emitted from the ancillary sources has lower content of HAP metal compounds than the PM associated with the metal melting furnaces. Therefore, the management practices in Option 2 are relatively less effective at reducing emissions of HAP metal compounds as compared to Option 1. The additional emissions reductions achieved by the management system under Option 2 do not justify the additional costs and economic burden. Therefore, we are proposing GACT for emissions of metal HAP compounds from small area source foundries is scrap management practices. See section III.B of this preamble for a summary of proposed scrap management practices.

D. How did EPA determine the GACT requirements for metal HAP from large iron and steel foundries?

1. Existing Sources

Based on the considerations of what constitutes GACT as described in section II.A of this preamble, we identified and evaluated four control options for existing large iron and steel foundries. Option 1 is the use of a management system that includes scrap management practices, developing and implementing operation and maintenance plans and start-up, shutdown, and malfunction plans, and meeting building opacity limits. Option 2 is the management system in conjunction with a PM emissions limit of 0.8 lb/ton for the metal melting furnaces. Option 3 is the management practices in conjunction with a PM emissions limit of 0.3 lb/ton. Table 2 of this preamble presents the national impacts of control options for existing large iron and steel foundries with a production capacity greater than 10,000 tpy.

TABLE 2.—NATIONAL IMPACTS OF GACT OPTIONS FOR EXISTING IRON AND STEEL FOUNDRIES WITH ANNUAL MELT PRODUCTION GREATER THAN 10,000 TPY [1]

Option	Total capital cost, $ (millions)	Total annual cost, $/yr (millions)	Emissions reduction, (tons PM/yr)	Cost effectiveness ($/ton PM)		Number of foundries impacted greater than 3% of revenues
				Overall	Incremental	
(A) Impacts in terms of metal HAP emissions reduction						
1	.....	0.90	3.7	240,000	.....	0
2	47	10.3	34	300,000	310,000	1
3	91	15.5	43	360,000	580,000	2

Option	Total capital cost, $ (millions)	Total annual cost, $/yr (millions)	Emissions reduction, (tons metal HAP/yr)	Cost effectiveness ($/ton metal HAP)		Number of foundries impacted greater than 3% of revenues
				Overall	Incremental	
(B) Impacts in terms of PM emissions reduction						
1	.....	0.90	88	10,000	.....	0
2	47	10.3	1,060	9,700	9,700	1
3	91	15.5	1,210	12,800	35,000	2

[1] Costs are in 2005 U.S. dollars.

As seen in Table 2 of this preamble, none of the control options evaluated for the large iron and steel foundry subcategory resulted in a substantial number of foundries with economic impacts exceeding 3 percent of revenues. The management practices represented in Option 1 are cost-effective for large iron and steel foundries; however, Option 1 effects minimal emissions reductions. Option 2 (an emissions limit of 0.8 lb/ton) has similar cost-effectiveness as Option 1, but achieves much greater emissions reductions, primarily by requiring controls on previously uncontrolled furnaces. The incremental cost-effectiveness when going from Option 2 to Option 3 is poor, indicating that it is not cost-effective to require existing large iron and steel foundries to achieve a 0.3 lb/ton or lower PM emission limit. This poor incremental cost-effectiveness results because a significant percentage of foundries would have to retrofit their existing control system under Option 3, and the cost-effectiveness of this retrofit is very poor. Consequently, when subcategorizing foundries by production thresholds, we are proposing Option 2 (management systems and PM emissions limit of 0.8 lb/ton) as GACT for existing large iron and steel foundries.

2. New Sources

The available emissions data for existing large area source iron and steel foundries were reviewed. The best-performing metal melting controls for this subcategory were all baghouses, regardless of furnace type. For each type of metal melting furnace, the best-performing baghouse control systems achieved a PM emission limitation of 0.1 lb/ton. Therefore, when subcategorizing foundries by production thresholds, we are proposing that GACT is a PM emission limit of 0.1 lb/ton for new large iron and steel foundries.

E. How did EPA determine the GACT requirements for organic HAP from iron and steel foundries?

Iron and steel foundries were not specifically listed under the Integrated Urban Air Toxics Strategy for any organic HAP. However, iron and steel foundries have the potential to emit organic HAP from a variety of sources at the facility, including the metal melting furnace; pouring, cooling, and shake-out lines; mold and core making, and mold and core coating. Reductions in the organic content of binder systems, for example, can reduce emissions from both mold and core making as well as from pouring, cooling, and shake-out.

We reviewed pollution prevention measures applicable to reduce organic HAP. Preventing pollution before it is generated is environmentally sound and preferable to controlling emissions after they are created. Low emitting binders and other pollution prevention technologies have demonstrated reductions in organic HAP emissions. However, there is no pollution prevention technology that is universally applicable for all iron and steel foundries due to the vast variety of casting production requirements encountered by the industry. Each technology must be evaluated on a case-by-case basis.

This proposed area source rule provides an opportunity for EPA to promote pollution prevention. We identified several pollution prevention measures which are feasible and appropriate for this industry. For example, the proposed scrap management program can also reduce emissions of organic HAP by ensuring that the scrap is depleted of chlorinated plastics at all times and that the scrap is depleted, to the extent practicable, of post-consumer oil filters and other oily material unless an adequate organic control system is used (e.g., an afterburner on a cupola). Additionally, we identified an alternative furfuryl alcohol warm box catalyst system that does not contain methanol. This alternative catalyst formulation requires no equipment re-tooling and provides performance comparable to the methanol-containing formulation. Therefore, we are proposing that GACT for iron and steel foundries include the organic-related provisions in the scrap management program for all iron and steel foundries and the use of a furfuryl

alcohol warm box catalyst system that does not contain methanol for foundries that use a furfuryl alcohol warm box binder system.

EPA encourages the area source foundries to learn about and investigate pollution prevention (P2) methods and technologies that may reduce or eliminate organic HAP emissions, while maintaining their quality, productivity, and competitiveness. Therefore, as part of this proposed rule, EPA is also requiring foundries to keep copies of purchasing records, Material Safety Data Sheets, or other documentation that provides information on liquid or solid binder materials. Among other things, these records may assist area source foundry owners or operators in their pursuit of cost-effective pollution prevention opportunities.

F. How did EPA select the proposed compliance requirements?

We are proposing testing, monitoring, notification, and recordkeeping requirements needed to ensure compliance with the rule requirements. These provisions include scaled-down versions of requirements that have been applied to several industries, including larger iron and steel foundries that are subject to the standards for major sources in 40 CFR part 63, subpart EEEEE. In selecting these requirements, we identified the minimum information necessary to ensure emissions controls are maintained and operated properly on a continuing basis (Option 1). We also evaluated more enhanced monitoring requirements, such as the use of bag leak detection systems, that were required in 40 CFR part 63, subpart EEEEE (Option 2). The enhanced monitoring requirements under Option 2 increased by three the number of foundries impacted greater than 1 percent of revenue and caused one additional small business foundry to have compliance costs that exceed 3 percent of revenue. In light of the additional burdens that enhanced monitoring would pose for small foundries, we are not proposing enhanced monitoring requirements. The selected monitoring option ensures compliance with the requirements of this proposed rule without posing a significant additional burden for foundries that must implement them.

We are allowing up to 1 year for all existing area source foundries to comply with the pollution prevention management practices and up to 2 years after initial classification for large foundries to comply with the emissions limitations, and operation and maintenance requirements. If a small foundry exceeds the annual metal melt production threshold for a large foundry for the first time, the foundry would be required to submit a notification of reclassification within 30 days and comply with the requirements for large iron and steel foundries within 2 years. A facility that is classified as a large foundry must comply with the requirements for a large foundry for at least 3 years before reclassifying the facility as a small facility, even if the annual production falls below 10,000 tons of melted metal. All foundries would be required to provide written notification to the Administrator of a change in compliance status.

Because of the uncertainty in the emissions control status of existing facilities, we are proposing that each foundry conduct a performance test for each metal melting furnace (or group of all metal melting furnaces) subject to the PM or total metal HAP emissions limit and each building or structure subject to the opacity limit for fugitive emissions. Existing foundries may choose to use the results of a previous performance test that demonstrates compliance with the applicable PM or total metal HAP emissions limit for a metal melting furnace or group of all metal melting furnaces instead of conducting a new test, provided the previous test meets the rule requirements. This proposed rule requires the owner or operator to provide written notification of the intent to use the previous test data, including (if applicable) information demonstrating that the test data is representative of current operations and processes. This notification would be submitted no later than 60 days after the compliance date for an existing foundry in order that the foundry could still conduct a test within 180 days of the compliance date if the regulatory agency determines a new test is needed. Subsequent performance tests would be required every 5 years and each time the foundry changed an operating limit or made a process change likely to increase metal HAP emissions. We are proposing subsequent tests because the proposed monitoring requirements do not provide a direct measurement of emissions.

We are proposing opacity observations every 6 months to demonstrate compliance with the fugitive emissions limit. We evaluated alternative requirements, including equipment inspection and visible emission observations. These alternatives were not well correlated with the 20 percent building opacity emissions limit, and were therefore rejected. We request comment on alternative compliance requirements for the building opacity limit and the appropriate frequency of these observations. Alternatives to Method 9 observations must indicate how the suggested alternative can be related to the 20 percent opacity limit.

The proposed NESHAP allows CPMS for the control devices. We are proposing to require bag leak detection systems for baghouses used at new area sources; these are typical monitoring requirements at facilities of the size and complexity of iron and steel foundries area sources. Inspection and repair requirements are also proposed to ensure proper operation and maintenance of capture systems.

We are also proposing to apply the notification, testing, monitoring, operation and maintenance, recordkeeping, and reporting requirements in the part 63 General Provisions (40 CFR part 63, subpart A). The General Provisions are necessary for effective application of the standard for existing and new area sources. In the notification of compliance status required by 40 CFR 63.9(h), the owner or operator would certify that specified equipment has been installed and is operating for each regulated emissions source, the facility has complied with specific equipment standards and management practices, written plans have been prepared, and whether the plant is certifying compliance with emissions limits based on a previous performance test. Periodic startup, shutdown, and malfunction reports must be submitted as required by 40 CFR 63.6, and semiannual reports must be submitted as required by 40 CFR 63.10. The proposed NESHAP also includes recordkeeping requirements to supplement the requirements in 40 CFR 63.10. These records are needed for EPA to determine compliance with specific rule requirements. The testing, monitoring, notification, recordkeeping, and reporting requirements are necessary and sufficient to ensure compliance with the proposed requirements for existing and new area sources.

V. Summary of Impacts of This Proposed Rule

We estimate that the proposed standard (10,000 tpy production capacity threshold) will reduce emissions of HAP metal compounds by 35 tpy and will reduce PM emissions by 1,074 tpy from the baseline. Additionally, the proposed standard is expected to reduce emissions of organic HAP by 32 tpy. The total capital cost of the proposed standard is estimated at $47 million. The annual operating, maintenance, monitoring, recordkeeping, and reporting costs of the proposed standard are estimated at

$6.1 million per year. The total annualized cost of the proposed standard, including the annualized cost of capital equipment, is estimated at $10.5 million. Under the co-proposed alternative that sets a higher size threshold for large foundries, the estimated emission reductions from baseline are 29 tpy of metal HAP, 32 tpy of organic HAP, and 905 tpy of PM; the total capital cost of this alternative is estimated at $34 million and the total annualized cost of this alternative, including the annualized cost of capital equipment, is estimated at $7.9 million. Under the co-proposed alternative that does not subcategorize large foundries, the estimated emission reductions from baseline are 3.4 tpy of metal HAP, 32 tpy of organic HAP, and 64 tpy of PM; there are no capital costs under this alternative and the total annualized cost is estimated at $1.0 million. Additional information on our impact estimates on the sources is available in the docket. (See Docket Number EPA–HQ–OAR–2006–0359.)

The proposed standard is estimated to impact a total of 427 area source iron and steel foundries. When subcategorizing foundries by production thresholds, we estimate that 96 to 124 of these foundries will be large iron and steel foundries and 303 to 331 foundries will be small iron and steel foundries (depending on the production threshold). Approximately 45 percent of the large iron and steel foundries are owned by small entities whereas 85 percent of the small iron and steel foundries are owned by small entities.

The secondary impacts would include solid waste generated as a result of the PM emissions collected and energy impacts associated with operation of control devices. At a 10,000 tpy production capacity threshold, we estimate that 1,110 tpy of solid waste would be generated and an additional 4,490 megawatts per hour (MW-hr) of electrical energy would be consumed each year as a result of the proposed standard. Under the co-proposed alternative that sets a higher size threshold for large foundries, we estimate that 930 tpy of solid waste would be generated and an additional 3,680 megawatts per hour (MW-hr) of electrical energy would be consumed each year. Under the co-proposed alternative that does not subcategorize large foundries, there are no secondary impacts.

VI. Proposed Exemption From Title V Permit Requirements

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or '' on the area source category. In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor test for determining whether title V is unnecessarily burdensome for a particular source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule'').

The four factors that EPA identified in the Exemption Rule for determining whether title V is ''unnecessarily burdensome'' on a particular source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing the above factors in the Exemption Rule, we explained that we considered on ''a case-by-case'' basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the CAA. See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category. In the Exemption Rule, EPA also indicated that, consistent with the guidance provided by the legislative history of section 502(a), EPA would consider whether exempting the area source category would adversely affect public health, welfare or the environment in deciding whether to exempt an area source category. See 70 FR 15254–15255.

We applied the four-factor test to determine whether title V is unnecessarily burdensome on the Iron Foundries and Steel Foundries area source categories. Starting with the first factor, which is to determine whether permits would result in significant improvements to the compliance requirements for the area source categories, we compared the title V monitoring, recordkeeping, and reporting requirements of title V permitting rules (40 CFR 70.6 and 40 CFR 71.6) to those requirements in the proposed NESHAP. As noted above (see section III of this preamble), this proposed rule establishes different monitoring, recordkeeping, and reporting requirements for small and large foundries.

Specifically, this proposed rule requires all foundries to comply with the pollution prevention management practices for metallic scrap, mercury switches, and binder formulations. All foundries would be required to keep records of information that demonstrate compliance with the management practices for metallic scrap and mercury switch removal requirements. Records to document the use of binder chemical formulations that do contain methanol as a specific ingredient of the catalyst formulation for each furfuryl alcohol warm box or core making line may be the Material Data Safety Sheet (provided it contains appropriate information), a certified product data sheet, or a manufacturer's HAP data sheet. We are proposing that the area source facilities keep records of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. This proposed rule also requires all foundries to keep monthly production records to document annual metal melt production.

In addition to the pollution prevention management practices, large foundries would be required to comply with emissions limits, control device parameter operating limits, monitoring requirements, and operating and maintenance requirements. A CPMS would be required to measure and record operating parameters for a wet scrubber every 15 minutes and determine and record the 3-hour average pressure drop and water flow rate. If an electrostatic precipitator is used, the owner or operator would be required to measure the hourly average voltage and secondary current (or total power input)

using a CPMS or check and record the secondary current (or total power input) at least once a shift. For a baghouse, this proposed rule requires a CPMS to measure and record the baghouse pressure drop across each cell using a CPMS or by checking the pressure drop once a day and recording the results. Foundries would also make periodic inspections of each baghouse and record the results of each inspection. Alternatively, the owner or operator of an existing foundry may install and operate bag leak detection systems. Bag leak detection systems would be required for any new foundry. Large foundries would be required to make monthly inspections of capture systems. Performance tests for furnaces would be required every 5 years and every 6 months for fugitive emissions from buildings and structures housing foundry operations; the results would be reported in the next semiannual report. The proposed NESHAP also requires foundries to prepare and follow an operation and maintenance plan that identifies monitoring procedures and schedules. If a facility elected to use emissions averaging to demonstrate compliance, the foundry would be required to demonstrate compliance once each calendar month by calculating the weighted average emissions for the group of all metal melting furnaces at the foundry using an equation in the rule. This proposed rule requires records of the monthly calculations. This proposed rule, therefore, contains both continuous and noncontinuous monitoring requirements, which constitute periodic monitoring that will assure compliance with the proposed rule.

We also considered the extent to which title V could enhance compliance through additional recordkeeping or reporting, including title V requirements in 40 CFR 70.6 and 40 CFR 71.6 for a semiannual report, deviation reports, and an annual compliance certification. All foundries would be required to record specific information to demonstrate conformance with the pollution prevention management practices and keep records of monthly production data. All foundries also would be required to submit a notification that classifies the facility as a small foundry or a large foundry and to submit subsequent notifications for any change in classification.

Small foundries would be required to submit an initial notice of applicability and a notification of compliance status. Records would be required to demonstrate conformance with the pollution prevention management standards for metallic scrap, mercury switches, and binder formulations. Small foundries also would be required to report any deviation from the pollution prevention management practices in the semiannual report required by 40 CFR 63.10.

In addition to the records required by 40 CFR 63.10 of the general provisions, large foundries would be required to keep records to demonstrate conformance with the pollution prevention management standards for metallic scrap, mercury switches, and binder formulations; operation and maintenance plans; capture system inspections and repairs; control device monitoring and inspections; emissions averaging (if applicable); bag leak detection system settings and alarms (if applicable); and corrective actions. The semiannual report submitted by large foundries would include summary information on the number, duration, and cause of excursions or exceedances and the corrective action taken, on monitor downtime incidents, and deviations from pollution prevention management practices or operation and maintenance requirements. The proposed NESHAP requires large foundries to comply with applicable notification, recordkeeping, and reporting requirements in the general provisions (40 CFR part 63, subpart A) including requirements for startup, shutdown, and malfunction plans, reports, and records in 40 CFR 63.6(e)(3); see Table 3 of this proposed rule. When a startup, shutdown, and malfunction report must be submitted, it must consist of a letter containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy. The information in the reports required for area source foundries (both large and small) is similar to the information that must be provided in the semiannual reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

This proposed rule does not require an annual compliance certification report, which is a requirement of a title V permit. See 40 CFR 70.5(c)(9)(iii) and 40 CFR 71.6(c)(5)(i). EPA believes that the annual certification reporting requirement is not necessary because the initial compliance certifications, recordkeeping requirements, and semiannual reports are adequate to determine compliance for new or existing sources.

The monitoring, recordkeeping, and reporting requirements in the proposed NESHAP for the Iron Foundries and Steel Foundries area source categories are substantially equivalent to such requirements under title V. Therefore, we conclude that title V would not result in significant improvements to the compliance requirements we are proposing for these area source categories.

We evaluated factor two to determine whether title V permitting would impose a significant burden on the area source categories and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average annual cost of obtaining and complying with a title V permit was $7,700 per year per source, including fees, or $38,000 per source for a (5-year) permit period. See Information Collection Request (ICR) for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. There are certain activities associated with the part 70 and 71 rules that are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting program's requirements. The ICR for part 70 provides information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In considering the second factor for the 427 existing iron and steel foundries (319 of which are owned by small entities), we examined the potential economic implications for the source category. At a cost of $38,000 per source, the cost to the area source

category would be about $16.2 million. The cost of permits for this area source category would exceed the estimated total annualized cost of the standards ($10.5 million). Although our economic analysis of the impacts of this proposed rule on small entities does not include the cost of title V permitting, we believe that such additional costs would result in adverse impacts for many small entities and perhaps on the industry as a whole. We believe an additional cost of $38,000 would create a significant risk of closure for approximately 110 foundries, nearly all of which are owned by small entities, as the $38,000 cost of title V permitting alone would exceed 3 percent of revenues for these foundries. We also looked at the economic resources of facilities in this source category. While some facilities are large, sophisticated operations with expertise in regulatory and permitting requirements, the majority of facilities in this area source category are small entities which may not have this expertise. Due to the sheer number of facilities, we suspect that the cost impact could be aggravated by difficulties in obtaining assistance from overburdened permitting authorities.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained above under the second factor that the economic and non-economic costs of compliance with title V would impose a significant burden on approximately 110 area source iron and steel foundries. In addition, we do not think the costs for the existing or new sources would lead to any gains in compliance within the category. As discussed above for factor one, we determined that the compliance requirements of this NESHAP are substantially equivalent to the requirements of title V. Furthermore, as discussed below for factor four, there are adequate implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP. We conclude, therefore, that the costs of title V are not justified for the existing and new sources in this category.

The fourth factor we considered is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permits. We believe that the State programs are sufficient to assure compliance with these NESHAP. We also note that EPA retains authority to enforce these NESHAP at any time under CAA sections 112, 113 and 114.

We conclude that title V permitting is ''unnecessary'' to assure compliance with this proposed NESHAP because the statutory requirements for implementation and enforcement of the NESHAP by the delegated States and EPA are sufficient to assure compliance without title V permits. We also note that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. In addition, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. These additional programs can be used to supplement and enhance the success of compliance with this area source NESHAP. In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permitting.

In applying this factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. We do not have similar data available for this proposed rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the HAP regulations and provide assurances that they will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E. In light of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the final rule without relying on title V permitting.

Considering the factors in combination supports our proposed finding that title V is unnecessarily burdensome on these area source categories. We conclude that title V would not result in significant improvements to the compliance requirements applicable to these area source categories and that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. We also conclude that the cost of title V permitting would be burdensome; we also find that the cost is not justified because there would be little to no potential gains in compliance within the category if title V was required. Thus, we conclude that title V permitting is ''unnecessarily burdensome'' for the iron foundries and steel foundries area source categories.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome'', EPA also considered, consistent with guidance provided by the legislative history of CAA section 502(a), whether exempting these area source categories from title V requirements would adversely affect public health, welfare, or the environment. We see no reason to believe that exemption of this area source category from title V requirements would adversely affect public health, welfare, or the environment because these national standards would achieve a significant reduction in HAP and other emissions that would improve public health, welfare, and the environment. For the foregoing reasons, we propose to exempt iron foundries and steel foundries area source categories from title V permitting requirements.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may ''raise novel legal or policy issues.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information 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 information collection request (ICR) document prepared by EPA has been assigned EPA ICR number 2267.01

The recordkeeping and reporting requirements in this proposed rule are based on the requirements in EPA's National Program for Mercury Switch Removal (a voluntary agreement with participating industries) and the NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42

U.S.C. 7414). All information (other than emissions data) submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

All foundries would be required to submit an initial notification that classifies their facility as a small or large foundry and a subsequent notification for any change in classification. All foundries also would be required to maintain monthly production data to support their classification as a large or small foundry.

The proposed NESHAP requires small area source foundries to submit an initial notification of applicability and a notification of compliance status according to the requirements in the General Provisions (40 CFR part 63, subpart A). Small area source foundries also report any deviation from the pollution prevention management standards in the semiannual report required by 40 CFR 63.10 of the general provisions. Large area source foundries would be required to prepare and follow an O&M plan, conduct initial performance tests and follow-up tests every 5 years, monitor control device operating parameters, conduct opacity tests every 6 months for fugitive emissions, inspect and repair capture systems, and keep records to document compliance with the rule requirements. The owner or operator of an existing affected source would be allowed to certify compliance with the emissions limits based on the results of prior performance tests that meet the rule requirements; the owner or operator would be required to provide advance notification of the intent to use a prior performance test instead of conducting a new test. If compliance with the emissions limits for metal melting furnaces is demonstrated through emissions averaging, the owner or operator would be required to demonstrate compliance for each calendar month using a calculation procedure in the rule. The owner or operator of a large iron and steel foundry would be subject to all requirements in the General Provisions (40 CFR part 63, subpart A), including the requirements in 40 CFR 63.6(e) for startup, shutdown, and malfunction records and reports and the recordkeeping and reporting requirements in 40 CFR 63.10. The semiannual report would include summary information on excursions or exceedances, monitor downtime incidents, and deviations from management practices and operation and maintenance requirements.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 5,990 labor hours per year at a cost of $418,295 for the 427 area sources, with annualized capital costs of $8,490 and no O&M costs. No new area sources are estimated during the next 3 years. These estimates represent the maximum burden that would be imposed by the proposed standards (based on a subcategorization using a production capacity threshold of 10,000 tpy for the definition of ''small iron and steel foundry''). Because this proposal represents estimates of the maximum burden, we did not estimate the ICR burden associated with the co-proposed standards for this proposed rule.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

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 action, which includes this ICR, under Docket ID number EPA–HQ–OAR–2006–0897. Submit any comments related to the ICR for this proposed rules to EPA and OMB. See ''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 Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after September 17, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by October 17, 2007. This final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500 employees for NAICS codes 331511, 331512, and 331513); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule is estimated to impact a total of 427 area source iron and steel foundries; 319 of these foundries are small entities. We estimate that 124 of these foundries would be large iron and steel foundries (metal melt production greater than 10,000 tpy), and 303 foundries would be small iron and steel foundries (metal melt production of 10,000 tpy or less). Approximately 45 percent of the large iron and steel foundries are owned by small entities whereas 85 percent of the small iron and steel foundries are owned by small entities. Our analysis shows that small entity compliance costs, as assessed by the foundry's cost-to-sales ratio, are expected to range from 0.01 to 3.5 percent. The analysis also shows that of the 60 foundries owned by small entities subject to the requirements for large foundries (i.e., exceeding 10,000 tpy melt production), only one small entity may incur economic impacts exceeding 3 percent

of its revenue; see Table 2 of this preamble.

This proposed rule minimizes the impact on small entities by applying special provisions for small foundries that melt low quantities of metal (less than 10,000 tpy). Small iron and steel foundries would be required to prepare and follow pollution prevention management practices for metallic scrap and binder formulations, submit one-time notifications, monitor their metal melting rate on a monthly basis, report deviations if they occur, and keep certain records. Although this proposed rule contains requirements for new area sources, we are not specifically aware of any new area sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

We continue to be interested in the potential impacts of the proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule is not expected to impact State, local, or tribal governments. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule contains no requirements that apply to such governments, and impose no obligations upon them. Therefore, this proposed rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It 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. This proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (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.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It would 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 proposed rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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 Executive Order has the potential to influence the regulation. This proposed rule is not subject to the Executive Order because it is based on technology performance and not on health or safety risks.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this proposed rule is not likely to have any adverse energy effects because energy requirements would not be significantly impacted by the additional pollution controls or other equipment that are required by this proposed rule.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This proposed rule involves technical standards. The proposal cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5B, 5D, 5F, 5I, 9, and 29 in 40 CFR part 60, appendix A; and EPA Method 9095B, ''Paint Filter Liquids Test,'' in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 (incorporated by reference—see 40 CFR 63.14).

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to the EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5B, 5D, 5F, 9, 29, or 9095B. The search and review results are in the docket for this rule.

One VCS was identified as applicable to this proposed rule. The standard ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see 40 CFR 63.14) is cited in this proposed rule for its manual method for measuring the oxygen, carbon dioxide, and CO content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The search for emissions measurement procedures identified 13 other VCS. EPA determined that these 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this proposed rule were impractical alternatives to EPA test methods for the purposes of this proposed rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 13 methods are discussed in a memorandum in the docket for this proposed rule.

For the methods required or referenced by this proposed rule, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the general provisions. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The nationwide standards would reduce HAP emissions and thus decrease the amount of emissions to which all affected populations are exposed.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporations by reference, Reporting and recordkeeping requirements.

Dated: September 6, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Section 63.14 is amended by revising paragraphs (i)(1) and (k)(1)(iii) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), Table 5 to subpart DDDDD of this part, and Table 1 to subpart ZZZZZ of this part.

* * * * *

(k) * * *

(1) * * *

(iii) Method 9095B, ''Paint Filter Liquids Test,'' dated November 2004 and in Update III, IBR approved for §§ 63.7700(b) and 63.7765 of subpart EEEEE of this part and §§ 63.10885(a)(1) and 63.10906 of subpart ZZZZZ of this part.

* * * * *

3. Part 63 is amended by adding subpart ZZZZZ to read as follows:

Subpart ZZZZZ—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

Applicability and Compliance Dates

Sec.

63.10880 Am I subject to this subpart?

63.10881 What are my compliance dates?

63.10882 How does this subpart apply to small iron and steel foundries and large iron and steel foundries?

Pollution Prevention Management Practices

63.10885 What are my management practices for metallic scrap and mercury switches?

63.10886 What are my management practices for binder formulations?

Requirements for Small Iron and Steel Foundries

63.10890 What are my management practices and compliance requirements?

Requirements for Large Iron and Steel Foundries

63.10895 What are my standards and management practices?
63.10896 What are my operation and maintenance requirements?
63.10897 What are my monitoring requirements?
63.10898 What are my performance test requirements?
63.10899 What are my recordkeeping and reporting requirements?
63.10900 What parts of the General Provisions apply to me?

Other Requirements and Information

63.10905 Who implements and enforces this subpart?
63.10906 What definitions apply to this subpart?

Tables to Subpart ZZZZZ of Part 63

Table 1 to Subpart ZZZZZ of Part 63—Performance Test Requirements for Large Iron and Steel Foundries
Table 2 to Subpart ZZZZZ of Part 63—Establishment of Operating Limits for Large Iron and Steel Foundries
Table 3 to Subpart ZZZZZ of Part 63—Applicability of General Provisions to Large Iron and Steel Foundries
Table 4 to Subpart ZZZZZ of Part 63—Compliance Certifications for Large Iron and Steel Foundries

Subpart ZZZZZ—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

Applicability and Compliance Dates

§ 63.10880 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an iron and steel foundry that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each iron and steel foundry.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before September 17, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after September 17, 2007.

(c) On and after the date of publication of the final rule in the **Federal Register**, if your iron and steel foundry becomes a major source as defined in § 63.2, you must meet the requirements of 40 CFR part 63, subpart EEEEE.

(d) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act.

(e) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

(f) You must determine the initial applicability of the requirements of this subpart to a small foundry or a large foundry based on your facility's metal melt production for calendar year 2008. If the metal melt production for calendar year 2008 is 10,000 tons or less, your area source is a small foundry. If your metal melt production for calendar year 2008 is greater than 10,000 tons, your area source is a large foundry. You must submit a written notification to the Administrator that identifies your area source as a small foundry or a large foundry no later than 1 year after the date the final rule is published in the **Federal Register**.

§ 63.10881 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by the dates in paragraphs (a)(1) and (2) of this section.

(1) Except as provided in paragraph (d) of this section, not later than 1 year after the date of publication of the final rule in the **Federal Register** for the pollution prevention management practices in §§ 63.10885 and 63.10886.

(2) Except as provided in paragraph (d) of this section, not later than 2 years after the date of your large foundry's notification of the initial determination required in § 63.10880(f) for the standards and management practices in § 63.10895.

(b) If you have a new affected source for which the initial startup date is on or before the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the provisions of this subpart not later than the date of publication of the final rule in the **Federal Register**.

(c) If you own or operate a new affected source for which the initial startup date is after the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the provisions of this subpart upon startup of your affected source.

(d) Following the initial determination for a small foundry or large foundry required in § 63.10880(f),

(1) If the annual metal melt production of your small foundry exceeds 10,000 tons during the preceding calendar year, you must notify the Administrator within 30 days and comply with the requirements in paragraphs (d)(1)(i) or (ii) of this section, as applicable.

(i) If your small foundry has never been classified as a large foundry, you must comply with the requirements for a large foundry no later than 2 years after the date of your foundry's notification that the annual production exceeded 10,000 tons.

(ii) If your small foundry had previously been classified as a large foundry, you must comply with the requirements for a large foundry no later than the date of your foundry's most recent notification that the annual production exceeded 10,000 tons.

(2) If your facility is initially classified as a large foundry (or your small foundry subsequently becomes a large foundry), you must comply with the requirements for a large foundry for at least 3 years before reclassifying your facility as a small foundry, even if your annual production falls below 10,000 tons of melted metal. After 3 years, you may reclassify your facility as a small foundry provided your annual production for the preceding calendar year was 10,000 tons of melted metal or less. If you reclassify your large foundry as a small foundry, you must comply with the requirements for a small foundry no later than the date you notify the Administrator of the reclassification.

§ 63.10882 How does this subpart apply to small iron and steel foundries and large iron and steel foundries?

(a) If you own or operate a new or existing affected source that is a small iron and steel foundry as defined in § 63.10906, you must comply with the requirements in § 63.10890. The requirements in § 63.10890 include the pollution prevention management practices in §§ 63.10885 and 63.10886.

(b) If you own or operate a large iron and steel foundry as defined in § 63.10906, you must comply with the requirements in §§ 63.10895 through 63.10900. The requirements in § 63.10895 include the pollution prevention management practices in §§ 63.10885 and 63.10886.

Pollution Prevention Management Practices

§ 63.10885 What are my management practices for metallic scrap and mercury switches?

(a) *Metallic scrap management program.* For each segregated metallic scrap storage area, bin or pile, you must comply with the materials acquisition requirements in paragraph (a)(1) or (2) of this section. You must keep a copy of the material specifications onsite and readily available to all personnel with material acquisition duties, and provide a copy to each of your scrap vendors. You may have certain scrap subject to paragraph (a)(1) of this section and other scrap subject to paragraph (a)(2) of this section at your facility provided the metallic scrap remains segregated until charge make-up.

(1) *Restricted metallic scrap.* You must prepare and operate at all times according to written material specifications for the purchase and use of only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, chlorinated plastics, or free liquids. For the purpose of this subpart, ''free liquids'' is defined as material that fails the paint filter test by EPA Method 9095B, ''Paint Filter Liquids Test'' (Revision 2, November 2004), as published in EPA Publication SW–846 ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (incorporated by reference—see § 63.14). The requirements of this paragraph (a)(1) do not apply to the routine recycling of baghouse bags or other internal process or maintenance materials in the furnace.

(2) *General iron and steel scrap.* You must prepare and operate at all times according to written material specifications for the purchase and use of only iron and steel scrap that has been depleted (to the extent practicable) of organics and HAP metals in the charge materials used by the iron and steel foundry. The materials specifications must include at minimum the information specified in paragraph (a)(2)(i) or (ii) of this section.

(i) For scrap charged to a scrap preheater or metal melting furnace that is not equipped with an afterburner, metallic scrap materials must be depleted (to the extent practicable) of the presence of used oil filters, chlorinated plastic parts, accessible lead-containing components (such as batteries and wheel weights), and free liquids.

(ii) For scrap charged to a cupola metal melting furnace that is equipped with an afterburner, metallic scrap materials must be depleted (to the extent practicable) of the presence of chlorinated plastics, accessible lead-containing components (such as batteries and wheel weights), and free liquids.

(b) *Mercury requirements.* For each scrap provider, contract, or shipment, you must procure all motor vehicle scrap pursuant to one of the alternatives in paragraphs (b)(1), (2), or (3) of this section. You may have one scrap provider, contract, or shipment subject to one alternative and others subject to another alternative.

(1) *Site-specific plan for mercury switches.* You must comply with the requirements in paragraphs (b)(1)(i) through (v) of this section.

(i) You must include a requirement in your scrap specifications for removal of mercury switches from vehicle bodies used to make the scrap.

(ii) You must prepare and operate according to a plan demonstrating how your facility will implement the scrap specification in paragraph (b)(1)(i) of this section for removal of mercury switches. You must submit the plan to the Administrator for approval. The Administrator may change the approval status of the plan upon 90-days written notice based upon the semiannual report or other information. The plan must include:

(A) A means of communicating to scrap purchasers and scrap providers the need to obtain or provide motor vehicle scrap from which mercury switches have been removed and the need to ensure the proper disposal of the mercury switches removed as required by the Resource Conservation and Recovery Act (RCRA);

(B) Provisions for obtaining assurance from scrap providers that motor vehicle scrap provided to the facility meets the scrap specification;

(C) Provisions for periodic inspection, site visits, or other means of corroboration to ensure that scrap providers and dismantlers are implementing appropriate steps to minimize the presence of mercury switches in motor vehicle scrap and that they are properly disposing of the mercury switches removed, including the minimum frequency such means of corroboration will be implemented; and

(D) Provisions for taking corrective actions if needed, based on the results of procedures implemented in paragraph (b)(1)(ii)(C) of this section.

(iii) You must require each motor vehicle scrap provider to provide an estimate of the number of mercury switches removed from motor vehicle scrap sent to the facility during the previous year and the basis for the estimate. The Administrator may request documentation or additional information at any time.

(iv) You must establish a goal for the removal of at least 80 percent of the mercury switches. Although a site-specific plan approved under paragraph (b)(1) of this section may require only the removal of convenience light switch mechanisms, the Administrator will credit all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in anti-locking brake systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal.

(v) You must submit semiannual progress reports to the Administrator that provide the number of mercury switches removed or the weight of mercury recovered from the switches, the number of vehicles processed, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were recycled at RCRA-permitted facilities. The Administrator may change the approval status of a site-specific plan following 90-days notice based on the progress reports or other information.

(2) *Alternative for approved mercury programs.* You must certify in your notification of compliance status that you participate in and purchase motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator based on the criteria in paragraphs (b)(2)(i) through (iii) of this section.

(i) There is an outreach program that informs the dismantlers of the need for removal of mercury switches and provides training and guidance for removing mercury switches;

(ii) The program has a goal for the removal of at least 80 percent of mercury switches. Although a program approved under paragraph (b)(2) of this section may require only the removal of convenience light switch mechanisms, the Administrator will credit all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in anti-locking brake systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal; and

(iii) The program sponsor agrees to submit progress reports to the Administrator no less frequently than once every year that provide the number of mercury switches removed or the

weight of mercury recovered from the switches, the number of vehicles processed, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were recycled at RCRA-permitted facilities. The Administrator may change the approval status of a program following 90-days notice based on the progress report or other information.

(3) *Alternative for specialty metal scrap.* You must certify in your notification of compliance status that the only materials from motor vehicles in the scrap are materials recovered for their specialty alloy (including, but not limited to, chromium, nickel, molybdenum, or other alloys) content (such as certain exhaust systems) and, based on the nature of the scrap and purchase specifications, that the type of scrap is not reasonably expected to contain mercury switches.

§ 63.10886 What are my management practices for binder formulations?

For each furfuryl alcohol warm box mold or core making line at a new or existing iron and steel foundry, you must use a binder chemical formulation that does not use methanol as a specific ingredient of the catalyst formulation. This requirement does not apply to the resin portion of the binder system.

Requirements for Small Iron and Steel Foundries

§ 63.10890 What are my management practices and compliance requirements?

(a) You must comply with the pollution prevention management practices for metallic scrap and mercury switches in § 63.10885 and binder formulations in § 63.10886.

(b) You must submit an initial notification of applicability according to § 63.9(b)(2).

(c) You must submit a notification of compliance status according to § 63.9(h)(1)(i). You must send the notification of compliance status before the close of business on the 30th day after the applicable compliance date specified in § 63.10881. The notification must include the following compliance certifications, as applicable:

(1) ''This facility has prepared, and will operate by, written material specifications for metallic scrap according to § 63.10885(a)(1)'' and/or ''This facility has prepared, and will operate by, written material specifications for general iron and steel scrap according to § 63.10885(a)(2).''

(2) ''This facility has prepared, and will operate by, written material specifications for the removal of mercury switches and a site-specific plan implementing the material specifications according to § 63.10890(b)(1)'' and/or ''This facility participates in and purchases motor vehicles scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator according § 63.10890(b)(2)'' and/or ''This facility complies with the alternative requirements in § 63.10890(b)(3) for specialty metal scrap and will recover only materials from motor vehicles for their specialty alloy content that are not reasonably expected to contain mercury switches.'' No mercury switch certification is required if your facility does not purchase any motor vehicles scrap.

(3) ''This facility complies with the no methanol requirement for the catalyst portion of each binder chemical formulation for a furfuryl alcohol warm box mold or core making line according to § 63.10886.''

(d) You must maintain records of the information specified in paragraphs (d)(1) through (7) of this section according to the requirements in § 63.10(b)(1).

(1) Records supporting your initial notification of applicability and your notification of compliance status according to § 63.10(b)(2)(xiv).

(2) Records of your written materials specifications according to § 63.10885(a) and records that demonstrate compliance with the requirements for restricted metallic scrap in § 63.10885(a)(1) or general scrap in § 63.10885(a)(2).

(3) If you are subject to the requirements for a site-specific plan for mercury switch removal in § 63.10885(b)(1), you must:

(i) Maintain records of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the number of vehicles processed, and an estimate of the percent of mercury switches recovered; and

(ii) Submit semiannual reports of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the number of vehicles processed, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were recycled at RCRA-permitted facilities. The semiannual reports must include certification that you have conducted inspections, site visits, or taken other means of corroboration as required under § 63.10885(b)(1)(ii)(C). You must identify which alternative in paragraph § 63.10885(b) applies to each scrap provider, contract, or shipment. You may include this information in the semiannual reports required under paragraph (d) of this section.

(4) If you are subject to the alternative for approved mercury programs under paragraph (b)(2) of this section, you must maintain records identifying each scrap provider and documenting the scrap provider's participation in an approved mercury switch removal program.

(5) Records to document use of binder chemical formulation that does not contain methanol as a specific ingredient of the catalyst formulation for each furfuryl alcohol warm box mold or core making line as required by § 63.10886. These records must be the Material Safety Data Sheet (provided that it contains appropriate information), a certified product data sheet, or a manufacturer's hazardous air pollutant data sheet.

(6) Records of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records must be copies of purchasing records, Material Safety Data Sheets, or other documentation that provide information on the binder or coating materials used.

(7) Records of metal melt production for each calendar year.

(e) You must submit semiannual reports to the Administrator according to the requirements in § 63.10(e). The report must clearly identify any deviation from the pollution prevention management practices in §§ 63.10885 or 63.10886 and the corrective action taken.

(f) Beginning January 1, 2010, if the annual metal melt production for your small foundry exceeds 10,000 tons during the preceding year, you must submit a notification of foundry reclassification to the Administrator within 30 days and you must comply with the requirements for large foundries by the applicable dates in § 63.10881(d)(1)(i) or (d)(1)(ii).

(g) You must comply with the following requirements of General Provisions (40 CFR part 63, subpart A): §§ 63.1 through 63.5; § 63.6(a), (b), (c), and (e)(1); § 63.9; § 63.10(a), (b)(1), (b)(2)(xiv), (b)(3), (d)(1), (d)(4), and (f); and §§ 63.13 through 63.16.

Requirements for Large Iron and Steel Foundries

§ 63.10895 What are my standards and management practices?

(a) You must operate a capture and collection system for each metal melting furnace at a new or existing iron and steel foundry. Each capture and

collection system must meet accepted engineering standards, such as those published by the American Conference of Governmental Industrial Hygienists.

(b) You must not discharge to the atmosphere emissions from any metal melting furnace or group of all metal melting furnaces that exceed the applicable limit in paragraph (b)(1) or (2) of this section.

(1) For an existing iron and steel foundry, 0.8 pounds of particulate matter (PM) per ton of metal charged (lb/ton of PM) or 0.06 pounds of total metal HAP per ton of metal charged (lb/ton of total metal HAP).

(2) For a new iron and steel foundry, 0.1 lb/ton of PM or 0.008 lb/ton of total metal HAP.

(c) If you own or operate a new or existing iron and steel foundry, you must comply with each control device parameter operating limit in paragraphs (c)(1) through (3) of this section that applies to you.

(1) For each wet scrubber applied to emissions from a metal melting furnace, you must maintain the 3-hour average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial or subsequent performance test.

(2) For each electrostatic precipitator applied to emissions from a metal melting furnace, you must maintain the voltage and secondary current (or total power input) to the control device at or above the level established during the initial or subsequent performance test.

(3) For each baghouse applied to emissions from a metal melting furnace that is subject to the monitoring and inspection requirements in § 63.10897(c), you must maintain the pressure drop across each baghouse cell within the range established during the initial or subsequent performance test.

(d) If you own or operate a new or existing iron and steel foundry, you must not discharge to the atmosphere fugitive emissions from a building or structure housing any iron and steel foundry operations that exhibit opacity greater than 20 percent (6-minute average).

(e) You must comply with the pollution prevention management practices in §§ 63.10885 and 63.10886.

§ 63.10896 What are my operation and maintenance requirements?

(a) You must prepare and follow a written operation and maintenance (O&M) plan for each control device used to comply with the requirements of this subpart. You must maintain a copy of the O&M plan at the facility and make it available for review upon request. At a minimum, each plan must contain the following information:

(1) General facility and contact information;

(2) Positions responsible for inspecting, maintaining, and repairing emissions control devices which are used to comply with this subpart;

(3) Description of items, equipment, and conditions that will be inspected, including an inspection schedule for the items, equipment, and conditions. For baghouses, the O&M plan must include:

(i) If the baghouse is subject to the monitoring requirements in § 63.10897(c), information on how the baghouse system will be operated and maintained, including monitoring of pressure drop across baghouse cells and frequency of visual inspections of the baghouse interior and baghouse components such as dust removal and bag cleaning mechanisms and fans; or

(ii) If the baghouse is subject to the monitoring requirements in § 63.10897(d), the site-specific monitoring plan for each bag leak detection system required in § 63.10897(d)(2).

(4) Identity and estimated quantity of the replacement parts that will be maintained in inventory; and

(5) Procedures for operating and maintaining a continuous parameter monitoring system (CPMS) in accordance with manufacturer's specifications.

(b) You may use any other O&M, preventative maintenance, or similar plan which addresses the requirements in paragraph (a)(1) through (5) of this section to demonstrate compliance with the requirements for an O&M plan.

§ 63.10897 What are my monitoring requirements?

(a) For each wet scrubber applied to emissions from a metal melting furnace, you must use a continuous parameter monitoring system (CPMS) to measure and record the 3-hour average pressure drop and scrubber water flow rate.

(b) For each electrostatic precipitator applied to emissions from a metal melting furnace, you must measure and record the hourly average voltage and secondary current (or total power input) using a CPMS or check and record the voltage and secondary current (or total power input) at least once a shift.

(c) Except as specified in paragraph (d) of this section, you must comply with the monitoring and inspection requirements in paragraphs (c)(1) through (8) of this section for each baghouse applied to emissions from a metal melting furnace. You must record the date and results of each inspection.

(1) Measure and record the pressure drop across each baghouse cell each day.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply for pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or lying on their sides. You do not have to check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(d) If you own or operate an existing affected source, you may install, operate, and maintain a bag leak detection system for each negative pressure baghouse or positive pressure baghouse as an alternative to the baghouse monitoring and inspection requirements in paragraph (c) of this section. If you own or operate a new affected source, you must install, operate, and maintain a bag leak detection system for each negative pressure baghouse or positive pressure baghouse. You must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (d)(1) through (3) of this section.

(1) Each bag leak detection system must meet the requirements in paragraphs (d)(1)(i) through (vii) of this section.

(i) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative particulate matter loadings and the owner or operator shall continuously record the output from the bag leak detection system using a strip chart recorder, data logger, or other means.

(iii) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings

is detected over the alarm set point established in the operation and maintenance plan, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) The initial adjustment of the system must, at minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points. If the system is equipped with an alarm delay time feature, you also must adjust the alarm delay time.

(v) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set point, or alarm delay time. Except, once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonable effects including temperature and humidity according to the procedures in the monitoring plan required by paragraph (d)(2) of this section.

(vi) For negative pressure baghouses, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector sensor must be installed downstream of the baghouse and upstream of any wet scrubber.

(vii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must prepare a site-specific monitoring plan for each bag leak detection system to be incorporated in your O&M plan. You must operate and maintain each bag leak detection system according to the plan at all times. Each plan must address all of the items identified in paragraphs (d)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system.

(ii) Initial and periodic adjustment of the bag leak detection system including how the alarm set-point will be established.

(iii) Operation of the bag leak detection system including quality assurance procedures.

(iv) Maintenance of the bag leak detection system including a routine maintenance schedule and spare parts inventory list.

(v) How the bag leak detection system output will be recorded and stored.

(vi) Procedures for determining what corrective actions are necessary in the event of a bag leak detection alarm as required in paragraph (d)(3) of this section.

(3) In the event that a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete corrective action as soon as practicable, but no later than 10 calendar days from the date of the alarm. You must record the date and time of each valid alarm, the time you initiated corrective action, the correction action taken, and the date on which corrective action was completed. Corrective actions may include, but are not limited to:

(i) Inspecting the bag house for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse department.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

(e) You must make monthly inspections of the equipment that is important to the performance of the total capture system (i.e., pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (e.g., presence of holes in the ductwork or hoods, flow constrictions caused by dents or accumulated dust in the ductwork, and fan erosion). You must repair any defect or deficiency in the capture system before the next scheduled inspection. You must record the date and results of each inspection and the date of repair of any defect or deficiency.

(f) You must install, operate, and maintain each CPMS or other measurement device according to your O&M plan. You must record all information needed to document conformance with these requirements.

(g) In the event of an exceedance of an established emissions limitation (including operating limit), you must restore operation of the emissions source (including the control device and associated capture system) to its normal or usual manner or operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. The response shall include minimizing the period of any startup, shutdown or malfunction and taking any necessary corrective actions to restore normal operation and prevent the likely recurrence of the exceedance. You must record the date and time correction action was initiated, the correction action taken, and the date corrective action was completed.

(h) If you choose to comply with an emissions limit in § 63.10895(b) using emissions averaging, you must calculate and record for each calendar month the pounds of PM or total metal HAP per ton of metal melted from the group of all metal melting furnaces at your foundry. You must calculate and record the weighted average pounds per ton emissions rate for the group of all metal melting furnaces at the foundry determined from the performance test procedures in § 63.10898(d) and (e).

(i) Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must conduct all continuous monitoring (or must collect data at all required intervals) at all times that the emissions source is operating. Data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities shall not be used for the purposes of this subpart, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, and not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.10898 What are my performance test requirements?

(a) You must conduct a performance test to demonstrate initial compliance with the applicable emissions limits for each metal melting furnace or group of all metal melting furnaces that is subject to an emissions limit in § 63.10895(b) and for each building or structure housing foundry operations that is subject to the opacity limit for fugitive emissions in § 63.10895(d). You must conduct the test within 180 days of your compliance date and report the results in your notification of compliance status.

(1) If you own or operate an existing iron and steel foundry, you may choose to submit the results of a prior performance test for PM or total metal HAP that demonstrates compliance with the applicable emissions limit for a metal melting furnace or group of all metal melting furnaces provided the test

was conducted within the last 5 years using the methods and procedures specified in this subpart and either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite such process changes.

(2) If you own or operate an existing iron and steel foundry and you choose to submit the results of a prior performance test according to paragraph (a)(1) of this section, you must submit a written notification to the Administrator of your intent to use the previous test data no later than 60 days after your compliance date. The notification must contain a full copy of the performance test and contain information to demonstrate, if applicable, that either no process changes have been made since the test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite such process changes.

(b) You must conduct subsequent performance tests to demonstrate compliance with the applicable emissions limit § 63.10895(b) for a metal melting furnace or group of all metal melting furnaces no less frequently than every 5 years and each time you elect to change an operating limit or make a process change likely to increase HAP emissions.

(c) You must conduct each performance test according to the requirements in § 63.7(e)(1), Table 1 to this subpart, and paragraphs (d) through (g) of this section.

(d) To determine compliance with the applicable PM or total metal HAP emissions limit in § 63.10895(b) for a metal melting furnace in a lb/ton of metal charged format, compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section:

$$E_p = \frac{C \times Q \times T}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process-weighted mass emissions of PM or total metal HAP, lb/ton;

C = Concentration of PM or total metal HAP, gr/dscf;

Q = Volumetric flow rate of stack gas, dscf/hr;

T = Total time during a test run that a sample is withdrawn from the stack during melt production cycle, hr;

P = Total amount of metal charged during the test run, tons; and

K = Conversion factor, 7,000 grains per pound.

(e) To determine compliance with the applicable emissions limit in § 63.10895(b) for a group of all metal melting furnaces using emissions averaging,

(1) Determine and record the monthly average charge rate for each metal melting furnace at your iron and steel foundry for the previous calendar month; and

(2) Compute the mass-weighted PM or total metal HAP using Equation 2 of this section.

$$E_c = \frac{\sum_{i=1}^{n} (E_{pi} \times T_{ti})}{\sum_{i=1}^{n} T_{ti}} \qquad \text{(Eq. 2)}$$

Where:

E_C = The mass-weighted PM or total metal HAP emissions for the group of all metal melting furnaces at the foundry, lb/ton;

E_{pi} = Process-weighted mass emissions of PM or total metal HAP for individual emission unit i as determined from the performance test and calculated using Equation 1 of this section, lb/ton;

T_{ti} = Total tons of metal charged for individual emission unit i for the calendar month prior to the performance test, tons; and

n = The total number of metal melting furnaces at the iron and steel foundry.

(3) For an uncontrolled electric induction furnace that is not equipped with a capture system, you may assume an emissions factor of 3 pounds per ton of PM or 0.2 pounds per ton of total metal HAP per ton of metal melted in Equation 2 of this section instead of a measured test value. If the uncontrolled electric induction furnace is equipped with a capture system, you must use a measured test value.

(f) To determine compliance with the applicable PM or total metal HAP emissions limit for a metal melting furnace in § 63.10895(b) when emissions from one or more regulated furnaces are combined with other non-regulated emissions sources, you may demonstrate compliance using the procedures in paragraphs (f)(1) through (3) of this section.

(1) Determine the PM or total metal HAP process-weighted mass emissions for each of the regulated streams prior to the combination with other exhaust streams or control device.

(2) Measure the flow rate and PM or total metal HAP concentration of the combined exhaust stream both before and after the control device and calculate the mass removal efficiency of the control device using Equation 3 of this section.

$$\%\ \text{reduction} = \frac{E_i - E_o}{E_i} \times 100\% \qquad \text{(Eq. 3)}$$

Where:

E_i = Mass emissions rate of PM or total metal HAP at the control device inlet, lb/hr;

E_o = Mass emissions rate of PM or total metal HAP at the control device outlet, lb/hr.

(3) Meet the applicable emissions limit based on the calculated PM or total metal HAP process-weighted mass emissions for the regulated emissions source using Equation 4 of this section:

$$E_{p1_{released}} = E_{p1i} \times \left(1 - \frac{\%\ \text{reduction}}{100}\right) \qquad \text{(Eq. 4)}$$

Where:

$E_{p1released}$ = Calculated process-weighted mass emissions of PM (or total metal HAP) predicted to be released to the atmosphere from the regulated emissions source, lb/ton; and

E_{p1i} = Process-weighted mass emissions of PM (or total metal HAP) in the uncontrolled regulated exhaust stream, lb/ton.

(g) To determine compliance with an emissions limit for situations when multiple sources are controlled by a single control device, but only one source operates at a time or other situations that are not expressly considered in paragraphs (d) through (f) of this section, you must submit a site-

specific test plan to the Administrator for approval according to the requirements in § 63.7(c)(2) and (3).

(h) You must conduct each opacity test for fugitive emissions according to the requirements in § 63.6(h)(5) and Table 1 to this subpart.

(i) You must conduct subsequent performance tests to demonstrate compliance with the opacity limit in § 63.10895(d) no less frequently than every 6 months and each time you make a process change likely to increase fugitive emissions.

(j) In your performance test report, you must certify that the capture system operated normally during the performance test.

(k) You must establish operating limits during the initial performance test according to the requirements in Table 2 of this subpart. You may use a previous performance test conducted prior to September 17, 2007 to establish an operating limit provided the test meets the requirements in paragraph (a)(1) of this section.

(l) You may change the operating limits for a wet scrubber, electrostatic precipitator, or baghouse if you meet the requirements in paragraphs (l)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your plan to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emissions limitation in § 63.10895(b).

(3) Establish revised operating limits according to the applicable procedures in Table 2 to this subpart.

§ 63.10899 What are my recordkeeping and reporting requirements?

(a) In addition to the records required by 40 CFR 63.10, you must maintain records of the information specified in paragraphs (a)(1) through (12) of this section according to the requirements in § 63.10(b)(1).

(1) Records of your written materials specifications according to § 63.10885(a) and records that demonstrate compliance with the requirements for restricted metallic scrap in § 63.10885(a)(1) or general scrap in § 63.10885(a)(2).

(2) If you are subject to the requirements for a site-specific plan for mercury switch removal in § 63.10885(b)(1), you must:

(i) Maintain records of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the number of vehicles processed, and an estimate of the percent of mercury switches recovered; and

(ii) Submit semiannual reports of the number of mercury switches removed or the weight of mercury recovered from the switches and properly managed, the number of vehicles processed, an estimate of the percent of mercury switches recovered, and certification that the recovered mercury switches were recycled at RCRA-permitted facilities. The semiannual reports must include certification that you have conducted inspections, site visits, or taken other means of corroboration as required under § 63.10885(b)(1)(ii)(C). You must identify which alternative in § 63.10885(b) applies to each scrap provider, contract, or shipment. You may include this information in the semiannual reports required under paragraph (b) of this section.

(3) If you are subject to the alternative for approved mercury programs under § 63.10885(b)(2), you must maintain records identifying each scrap provider and documenting the scrap provider's participation in an approved mercury switch removal program.

(4) Records to document use of binder chemical formulation that does not contain methanol as a specific ingredient of the catalyst formulation for each furfuryl alcohol warm box mold or core making line as required by § 63.10886. These records must be the Material Safety Data Sheet (provided that it contains appropriate information), a certified product data sheet, or a manufacturer's hazardous air pollutant data sheet.

(5) Records of the annual quantity and composition of each HAP-containing chemical binder or coating material used to make molds and cores. These records must be copies of purchasing records, Material Safety Data Sheets, or other documentation that provide information on the binder or coating materials used.

(6) Records of monthly metal melt production for each calendar year.

(7) Operation and maintenance plan as required by § 63.10896(a) and records that demonstrate compliance with plan requirements.

(8) If you use emissions averaging, records of monthly metal melting rate for each furnace at your iron and steel foundry, and records of the calculated pounds of PM or total metal HAP per ton of metal melted for the group of all metal melting furnaces required by § 63.10897(h).

(9) Records of baghouse monitoring and inspections required by § 63.10897(c) or, if applicable, records for bag leak detection systems as follows:

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, and for each valid alarm, the time you initiated corrective action, the corrective action taken, and the date on which corrective action was completed.

(10) Records of capture system inspections and repairs as required by § 63.10897(e).

(11) Records demonstrating conformance with your O&M plan and specifications for the operation of CPMS as required by § 63.10897(f).

(12) Records of corrective action(s) for exceedances and excursions as required by § 63.10897(h).

(b) You must submit semiannual reports to the Administrator according to the requirements in § 63.10(e). The reports must include, at a minimum, the following information as applicable:

(1) Summary information on the number, duration, and cause (including unknown cause, if applicable) of excursions or exceedances, as applicable, and the corrective action taken;

(2) Summary information on the number, duration, and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other calibration checks, if applicable); and

(3) Summary information on any deviation from the pollution prevention management practices in §§ 63.10885 and 63.10886 and the operation and maintenance requirements in § 63.10896 and the corrective action taken.

§ 63.10900 What parts of the General Provisions apply to me?

(a) If you own or operate a new or existing affected source, you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) according to Table 3 of this subpart.

(b) Your notification of compliance status required by § 63.9(h) must include each applicable certification of compliance, signed by a responsible official, in Table 4 of this subpart.

Other Requirements and Information

§ 63.10905 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by EPA or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State,

local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of an alternative non-opacity emissions standard under 40 CFR 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' under is defined in § 63.90.

(5) Approval of a major change to recordkeeping and reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§ 63.10906 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section.

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Binder chemical means a component of a system of chemicals used to bind sand together into molds, mold sections, and cores through chemical reaction as opposed to pressure.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device or to the atmosphere. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Cupola means a vertical cylindrical shaft furnace that uses coke and forms of iron and steel such as scrap and foundry returns as the primary charge components and melts the iron and steel through combustion of the coke by a forced upward flow of heated air.

Deviation means any instance in which an affected source or an owner or operator of such an affected source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emissions limitation (including operating limits), management practice, or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any iron and steel foundry required to obtain such a permit; or

(3) Fails to meet any emissions limitation (including operating limits) or management standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Electric arc furnace means a vessel in which forms of iron and steel such as scrap and foundry returns are melted through resistance heating by an electric current flowing through the arcs formed between the electrodes and the surface of the metal and also flowing through the metal between the arc paths.

Electric induction furnace means a vessel in which forms of iron and steel such as scrap and foundry returns are melted though resistance heating by an electric current that is induced in the metal by passing an alternating current through a coil surrounding the metal charge or surrounding a pool of molten metal at the bottom of the vessel.

Exhaust stream means gases emitted from a process through a conveyance as defined in this subpart.

Foundry operations means all process equipment and practices used to produce metal castings for shipment. *Foundry operations* include: mold or core making and coating; scrap handling and preheating; metal melting and inoculation; pouring, cooling, and shakeout; shotblasting, grinding, and other metal finishing operations; and sand handling.

Free liquids means material that fails the paint filter test by EPA Method 9095B (incorporated by reference—see § 63.14). That is, if any portion of the material passes through and drops from the filter within the 5-minute test period, the material contains free liquids.

Furfuryl alcohol warm box mold or core making line means a mold or core making line in which the binder chemical system used is that system commonly designated as a furfuryl alcohol warm box system by the foundry industry.

Iron and steel foundry means a facility or portion of a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce. Research and development facilities and operations that only produce non-commercial castings are not included in this definition.

Large iron and steel foundry means an iron and steel foundry with a metal melt production greater than 10,000 tons per year.

Metal charged means the quantity of scrap metal, pig iron, metal returns, alloy materials, and other solid forms of iron and steel placed into a metal melting furnace. Metal charged does not include the quantity of fluxing agents or, in the case of a cupola, the quantity of coke that is placed into the metal melting furnace.

Metal melting furnace means a cupola, electric arc furnace, electric induction furnace, or similar device that converts scrap, foundry returns, and/or other solid forms of iron and/or steel to a liquid state. This definition does not include a holding furnace, an argon oxygen decarburization vessel, or ladle that receives molten metal from a metal melting furnace, to which metal ingots or other material may be added to adjust the metal chemistry.

Metal melt production means the quantity of metal melted in a metal melting furnace or group of all metal melting furnaces at the iron and steel foundry. For the purposes of this subpart, metal melt production is determined on the basis on the quantity of metal charged to each metal melting furnace; the sum of the metal melt production rates for each furnace is the total metal melt production of the foundry.

Mold or core making line means the collection of equipment that is used to mix an aggregate of sand and binder chemicals, form the aggregate into final shape, and harden the formed aggregate. This definition does not include a line for making green sand molds or cores.

Responsible official means responsible official as defined in § 63.2.

Scrap preheater means a vessel or other piece of equipment in which metal scrap that is to be used as melting

furnace feed is heated to a temperature high enough to eliminate volatile impurities or other tramp materials by direct flame heating or similar means of heating. Scrap dryers, which solely remove moisture from metal scrap, are not considered to be scrap preheaters for purposes of this subpart.

Scrubber blowdown means liquor or slurry discharged from a wet scrubber that is either removed as a waste stream or processed to remove impurities or adjust its composition or pH

Small iron and steel foundry means an iron and steel foundry that has a metal melt production of 10,000 tons per year or less.

Total metal HAP means, for the purposes of this subpart, the sum of the concentrations of compounds of antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium as measured by EPA Method 29 (40 CFR part 60, appendix A).

Tables to Subpart ZZZZZ of Part 63

As required in § 63.10898(c), you must conduct performance tests according to the test methods and procedures in the following table.

TABLE 1 TO SUBPART ZZZZZ OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR LARGE IRON AND STEEL FOUNDRIES

For . . .	You must . . .	According to the following requirements . . .
1. Each metal melting furnace subject to a PM or total metal HAP limit in § 63.10895(b).	a. Select sampling port locations and the number of traverse points in each stack or duct using EPA Method 1 or 1A (40 CFR part 60, appendix A).	Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.
	b. Determine volumetric flow rate of the stack gas using Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A).	
	c. Determine dry molecular weight of the stack gas using EPA Method 3, 3A, or 3B (40 CFR part 60, appendix A)[1].	
	d. Measure moisture content of the stack gas using EPA Method 4 (40 CFR part 60, appendix A).	
	e. Determine PM concentration using EPA Method 5, 5B, 5D, 5F, or 5I, as applicable or total metal HAP concentration using EPA Method 29 (40 CFR part 60, appendix A).	i. Collect a minimum sample volume of 60 dscf of gas during each PM sampling run. The PM concentration is determined using only the front-half (probe rinse and filter) of the PM catch.
		ii. For Method 29, only the measured concentration of the listed metal HAP analytes that are present at concentrations exceeding one-half the quantification limit of the analytical method are to be used in the sum. If any of the analytes are not detected or are detected at concentrations less than one-half the quantification limit of the analytical method, the concentration of those analytes is assumed to be zero for the purposes of calculating the total metal HAP.
		iii. A minimum of three valid test runs are needed to comprise a PM or total metal HAP performance test.
		iv. For cupola metal melting furnaces, sample PM or total metal HAP only during times when the cupola is on blast.
		v. For electric arc and electric induction metal melting furnaces, sample PM or total metal HAP only during normal melt production conditions, which may include, but are not limited to the following operations: charging, melting, alloying, refining, slagging, and tapping.
		vi. Determine and record the total combined weight of tons of metal charged during the duration of each test run. You must compute the process-weighted mass emissions of PM according to Equation 1 of § 63.10898(d) for an individual furnace or Equation 2 of § 63.10898(e) for the group of all metal melting furnaces at the foundry.
2. Fugitive emissions from buildings or structures housing any iron and steel foundry emissions sources subject to opacity limit in § 63.10895(f).	Using a certified observer, conduct each opacity test according to EPA Method 9 (40 CFR part 60, appendix A) and 40 CFR 63.6(h)(5).	i. The certified observer may identify a limited number of openings or vents that appear to have the highest opacities and perform opacity observations on the identified openings or vents in lieu of performing observations for each opening or vent from the building or structure. Alternatively, a single opacity observation for the entire building or structure may be performed, if the fugitive release points afford such an observation.

TABLE 1 TO SUBPART ZZZZZ OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR LARGE IRON AND STEEL FOUNDRIES—Continued

For . . .	You must . . .	According to the following requirements . . .
		ii. During testing intervals when PM or total metal HAP performance tests, if applicable, are being conducted, conduct the opacity test such that the opacity observations are recorded during the PM or total metal HAP performance tests.

[1] You may also use as an alternative to EPA Method 3B (40 CFR part 60, appendix A), the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas, ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' (incorporated by reference—see § 63.14).

As required in § 63.10898(k), you must establish operating limits using the procedures in the following table.

TABLE 2 TO SUBPART ZZZZZ OF PART 63.—PROCEDURES FOR ESTABLISHING OPERATING LIMITS FOR LARGE IRON AND STEEL FOUNDRIES

For . . .	You must . . .
1. Each wet scrubber subject to the operating limits in § 63.10895(c)(1) for pressure drop and scrubber water flow rate.	Using the CPMS required in § 63.10897(a), measure and record the pressure drop and scrubber water flow rate in intervals of no more than 15 minutes during each PM or total metal HAP test run. Compute and record the average pressure drop and average scrubber water flow rate for each valid sampling run in which the applicable emissions limit is met.
2. Each electrostatic precipitator subject to operating limits in § 63.10895(c)(2) for voltage and secondary current (or total power input).	Measure and record voltage and secondary current (or total power input) manually or by CPMS every 15 minutes during each PM or total metal HAP test run. Compute and record the minimum hourly average voltage and secondary current (or total power input) from all the readings for each valid sampling run in which the applicable emissions limit is met.
3. Each baghouse subject to the operating limit in § 63.10895(c)(3) for pressure drop.	Measure and record the minimum and maximum pressure drop across each baghouse cell during each PM or total metal HAP test run. Compute and record the average minimum and maximum pressure drop values for the three runs.

As required in § 63.10900(a), you must meet each requirement in the following table that applies to you.

TABLE 3 TO SUBPART ZZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO LARGE IRON AND STEEL FOUNDRIES

Citation	Subject	Applies to large iron and steel foundry?	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and abbreviations	Yes.	
63.4	Prohibited activities	Yes.	
63.5	Construction/Reconstruction	Yes.	
63.6(a)–(g)	Compliance with standards and maintenance requirements.	Yes.	
63.6(h)	Opacity and visible emissions standards	Yes.	
63.6(i)(i)–(j)	Compliance extension and Presidential compliance exemption.	Yes.	
63.7(a)(3), (b)–(h)	Performance testing requirements	Yes.	
63.7(a)(1)–(a)(2)	Applicability and performance test dates	No	Subpart ZZZZZ specifies applicability and performance test dates.
63.8(a)(1)–(a)(3),(b), (c)(1)–(c)(3), (c)(6)–(c)(8), (d), (e), (f)(1)–(f)(6),(g)(1)–(g)(4).	Monitoring requirements	Yes.	
63.8(a)(4)	Additional monitoring requirements for control devices in § 63.11.	No.	
63.8(c)(4)	Continuous monitoring system (CMS) requirements.	No.	

TABLE 3 TO SUBPART ZZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO LARGE IRON AND STEEL FOUNDRIES—Continued

Citation	Subject	Applies to large iron and steel foundry?	Explanation
63.8(c)(5)	Continuous opacity monitoring system (COMS) Minimum Procedures.	No.	
63.8(g)(5)	Data reduction	No.	
63.9	Notification requirements	Yes.	
63.10(a), (b)(1)–(b)(2)(xii)–(b)(2)(xiv), (b)(3), (d)(1)–(2), (e)(1)–(2), (f).	Recordkeeping and reporting requirements	Yes.	
63.10(c)(1)–(6), (c)(9)–(15)	Additional records for continuous monitoring systems.	No.	
63.10(c)(7)–(8)	Records of excess emissions and parameter monitoring exceedances for CMS.	Yes.	
63.10(d)(3)	Reporting opacity or visible emissions observations.	Yes.	
63.10(e)(3)	Excess emissions reports	Yes.	
63.10(e)(4)	Reporting COMS data	No.	
63.11	Control device requirements	No.	
63.12	State authority and delegations	Yes.	
63.13–63.16	Addresses of State air pollution control agencies and EPA regional offices. Incorporation by reference. Availability of information and confidentiality. Performance track provisions.	Yes.	

As required by § 63.10900(b), your notification of compliance status must include certifications of compliance according to the following table.

TABLE 4 TO SUBPART ZZZZZ OF PART 63.—COMPLIANCE CERTIFICATIONS FOR LARGE IRON AND STEEL FOUNDRIES

For . . .	Your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official:
Each new or existing affected source subject to scrap management requirements in § 63.10885(a)(1) or (2).	''This facility has prepared, and will operate by, written material specifications for metallic scrap according to § 63.10885(a)(1)'' or ''This facility has prepared, and will operate by, written material specifications for general iron and steel scrap according to § 63.10890(a)(2).''
Each new or existing affected source subject to mercury switch removal requirements in § 63.10885(b).	''This facility has prepared, and will operate by, written material specifications for the removal of mercury switches and a site-specific plan implementing the material specifications according to § 63.10890(b)(1)'' or ''This facility participates in and purchases motor vehicles scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator according to § 63.10890(b)(2)'' or ''This facility complies with the alternative requirements in § 63.10890(b)(3) for specialty metal scrap and will recover only materials from motor vehicles for their specialty alloy content that are not reasonably expected to contain mercury switches.''
Each new or existing affected source subject to § 63.10886	''This facility complies with the no methanol requirement for the catalyst portion of each binder chemical formulation for a furfuryl alcohol warm box mold or core making line according to § 63.10886.''
Each new or existing affected source subject to § 63.10895(a).	''This facility operates a capture and collection system for each emissions source subject to this subpart according to § 63.10895(a).''
Each existing affected source subject to § 63.10895(b)	''This facility complies with the PM or total metal HAP emissions limit in § 63.10895(b) for each metal melting furnace or group of all metal melting furnaces based on a previous performance test in accordance with § 63.10898(a)(1).''
Each new or existing affected source subject to 63.10896(a)	''This facility has prepared and will operate by an operation and maintenance plan according to § 63.10896(a).''
Each new or existing affected source subject to § 63.10896(c).	''This facility has prepared and will operate by an emissions averaging plan according to § 63.10896(c).''
Each new or existing affected source subject to § 63.10897(d).	''This facility has prepared and will operate by a site-specific monitoring plan for each bag leak detection system and submitted the plan to the Administrator for approval according to § 63.10897(d)(2).''

[FR Doc. E7–17972 Filed 9–14–07; 8:45 am]

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Federal Register

Monday,
September 17, 2007

Part IV

Department of Homeland Security

8 CFR Parts 103, 212, et al.

New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 214, 248, 274a and 299

[CIS No. 2170–05; DHS Docket No. USCIS–2006–0069]

RIN 1615–AA67

New Classification for Victims of Criminal Activity; Eligibility for ''U'' Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends Department of Homeland Security regulations to establish the requirements and procedures for aliens seeking U nonimmigrant status. The U nonimmigrant classification is available to alien victims of certain criminal activity who assist government officials in investigating or prosecuting such criminal activity. The purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.

This interim rule outlines the eligibility and application requirements for the U nonimmigrant classification and the benefits and limitations relating to those granted U nonimmigrant status. This interim rule also amends existing regulations to include U nonimmigrants among the nonimmigrant status holders able to seek a waiver of documentary requirements to gain admission to the United States, and to permit nonimmigrants to change status to that of a U nonimmigrant where applicable. This rule also establishes a filing fee for U nonimmigrant petitions.

Aliens who have been granted interim relief from USCIS are encouraged to file for U nonimmigrant status within 180 days of the effective date of this interim rule. USCIS will no longer issue interim relief upon the effective date of this rule; however, if the alien has properly filed a petition for U nonimmigrant status, but USCIS has not yet adjudicated that petition, interim relief will be extended until USCIS completes its adjudication of the petition.

DATES: *Effective date.* This rule is effective October 17, 2007.

Comment date. Written comments must be submitted on or before November 16, 2007.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2006–0069 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2006–0069 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Laura Dawkins, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone: (202) 272–8350.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

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III. Analysis of Requirements and Procedures Under This Interim Rule
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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim rule. U.S. Citizenship and Immigration Services (USCIS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2006–0069. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

II. Background and Legislative Authority

Congress created the U nonimmigrant classification in the Battered Immigrant Women Protection Act of 2000 (BIWPA). *See* Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Battered Immigrant Women Protection Act of 2000, Pub. L. 106–386, sec. 1513, 114 Stat. 1464, 1533–37 (2000), *amended by* Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), tit. VIII, Pub. L. 109–162, 119 Stat. 2960 (2006), *amended by* Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109–271, 120 Stat. 750 (2006). Alien victims may not have legal status and, therefore may be reluctant to help in the investigation or prosecution of criminal activity for fear of removal from the United States. In

passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while offering protection to victims of such crimes. See BIWPA, sec. 1513(a)(2)(A). Congress also sought to encourage law enforcement officials to better serve immigrant crime victims. *Id.*

The U nonimmigrant classification was established under section 1513(b) of the BIWPA. Notwithstanding the title of the legislation, the U nonimmigrant classification is available to qualified victims of crimes, without regard to gender. The U nonimmigrant classification provides temporary immigration benefits to certain victims of criminal activity who: (1) Have suffered substantial mental or physical abuse as a result of having been a victim of criminal activity; (2) have information regarding the criminal activity; and (3) assist government officials in the investigation and prosecution of such criminal activity. USCIS can only grant U nonimmigrants status to 10,000 principal aliens in each fiscal year. *See* INA sec. 214(p)(2), 8 U.S.C. 1184 (p)(2). (Note: this number does not include persons eligible for U nonimmigrant derivative status—e.g. spouses, children, or parents of applicants—as discussed in Section III. C. of this rule below).

Aliens granted U nonimmigrant status can remain in the United States for a period of up to four years, with possible extensions upon certification of need by certain government officials. INA sec. 214(p)(6), 8 U.S.C. 1184(p)(6). Section 1513(f) of the BIWPA provides DHS with discretion to convert the temporary U nonimmigrant status to permanent resident status if (1) the alien has been physically present in the United States for a continuous period of at least three years since the date of admission as a U nonimmigrant; and (2) DHS determines that the ''alien's continued presence in the United States is justified on humanitarian grounds, to ensure the family unity, or is otherwise in the public interest.''

To qualify for the U nonimmigrant classification:

- The alien must have suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity;
- The alien must be in possession of information about the criminal activity of which he or she has been a victim;
- The alien must be of assistance to a Federal, State, or local law enforcement official or prosecutor, a Federal or State judge, the Department of Homeland Security (DHS), or other Federal, State, or local authority investigating or prosecuting criminal activity; and
- The criminal activity must have violated U.S. law or occurred in the United States (including Indian country and military installations) or the territories and possessions of the United States.

INA sec. 101(a)(15)(U)(i), 8 U.S.C. 1101(a)(15)(U)(i). Qualifying criminal activity is defined by statute to be ''activity involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]'' Id.,(iii). The list of qualifying crimes represents the myriad types of behavior that can constitute domestic violence, sexual abuse, or trafficking, or are crimes of which vulnerable immigrants are often targeted as victims.

U nonimmigrant status can also extend to certain family members of the alien victim. If the alien victim is under 21 years of age, the victim's spouse, children, unmarried siblings under 18 years of age, and the victim's parents may qualify for U nonimmigrant status. INA sec. 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I). If the alien victim is 21 years of age or older, his or her spouse and children may also qualify for U nonimmigrant status. INA sec. 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II).

Aliens applying for U nonimmigrant status must provide a certification from a Federal, State or Local law enforcement official demonstrating that the applicant ''has been helpful, is being helpful, or is likely to be helpful'' in the investigation or prosecution of the qualifying criminal activity. INA sec. 214(o), 8 U.S.C. 1184(o). The BIWPA further directs DHS to provide aliens who are eligible for U nonimmigrant status with referrals to nongovernmental organizations (NGOs) to advise the aliens regarding their options in the United States. Id. Further, USCIS is required to provide U nonimmigrants with employment authorization. Id.

Section 1513(e) of the BIWPA amended section 212(d) of the INA, 8 U.S.C. 1182(d), to provide for a waiver of inadmissibility if the Secretary of Homeland Security determines that such a waiver is in the public or national interest.[1] Finally, the BIWPA added a new paragraph (1)(E) to 8 U.S.C. 1367(a) to prohibit adverse determinations of admissibility or deportability and disclosure of information pertaining to an alien seeking U nonimmigrant status, except in certain circumstances. BIWPA sec. 1513(d) (amending section 384(a) of the Illegal Immigration and Immigrant Reform Act (IIRIRA), div. C of the Omnibus Appropriations Act of 1996, Pub. L. 104–208, 110 Stat. 3009 (1996)).

Following passage of the BIWPA in October 2000, USCIS implemented procedures to ensure that those aliens who appeared to be eligible for U nonimmigrant status under the BIWPA would not be removed from the United States until they had an opportunity to apply for such status. See *e.g.*, Memorandum from Michael D. Cronin, Acting Executive Associate Commissioner, Office of Field Operations, Immigration and Naturalization Service (Aug. 30, 2001); Memorandum from William R. Yates, Associate Director of Operations, USCIS, Centralization of Interim Relief for U Nonimmigrant Status Applicants (Oct. 8, 2003) (*http://www.uscis.gov/graphics/services/tempbenefits/antitraf.htm*); Memorandum from William R. Yates, Associate Director of Operations, USCIS, Assessment of Deferred Action in Requests for Interim Relief from U Nonimmigrant Status Eligible Aliens in Removal Proceedings (May 6, 2004) (*http://www.uscis.gov/graphics/services/tempbenefits/antitraf.htm*).[2] Alien victims who may be eligible for U nonimmigrant status were given the opportunity to ask USCIS for interim relief pending the promulgation of implementing regulations. Family members seeking to derive immigration benefits from such aliens were accorded the same treatment. Interim relief provides alien victims with parole, stays of removal, or assessed deferred action, as well as an opportunity to apply for employment authorization.[3]

[1] Unless waived, a ground of inadmissibility can preclude an alien from receiving nonimmigrant status. 8 CFR 214.1(a)(3). Section 212(a) of the INA, 8 U.S.C. 1182(a), contains a list of the grounds of inadmissibility.

[2] Copies of these documents are accessible on the public docket for this rulemaking at *www.regulations.gov,* Docket Number USCIS–2006–0069.

[3] Parole is permission given by DHS that allows an alien to physically enter the United States temporarily for urgent humanitarian reasons or

Continued

III. Analysis of Requirements and Procedures Under This Interim Rule

To implement the BIWPA and its creation of the U nonimmigrant classification, this interim rule outlines the eligibility and application requirements for the U nonimmigrant classification and the benefits and limitations relating to those granted U nonimmigrant status. Specifically, this interim rule provides definitions of relevant terms contained in the BIWPA and establishes procedures and standards for adjudicating petitions for U nonimmigrant status. It also describes the filing procedures and adjudication standards for applications for the waiver of inadmissibility created by the BIWPA that is available to those seeking U nonimmigrant status. New 8 CFR 212.17. The rule amends 8 CFR 212.1 to include U nonimmigrant status recipients among the nonimmigrant status holders able to seek a waiver of documentary requirements to gain admission to the United States. This rule also amends 8 CFR 248.2 to permit nonimmigrants to change status to that of a U nonimmigrant; 8 CFR 274a.12(a) to add U nonimmigrant status recipients to the list of aliens authorized to accept employment; 8 CFR 274a.13(a) to require an application to be filed for certain U nonimmigrants seeking evidence of employment authorization; 8 CFR 299.1 to prescribe the petition form for U nonimmigrant status; and 8 CFR 103.7 to prescribe the filing fee for U nonimmigrant petitions.

As discussed below, USCIS encourages petitioners and accompanying or following to join family members who have been granted interim relief to file Form I–918 within 180 days of the effective date of this rule. After the effective date of this rule, the interim relief process will no longer be in effect, and USCIS will not consider initial requests for interim relief. After the 180-day time period, USCIS will reevaluate previous grants of deferred action, parole, and stays of removal and terminate such interim relief for those aliens who fail to file Form I–918 within the 180-day time period. However, if the alien has properly filed a Form I–918, but USCIS has not yet adjudicated that petition, interim relief will be extended until USCIS completes its adjudication of Form I–918.

A. Eligibility Requirements for U Nonimmigrant Status

There are four statutory eligibility requirements for U nonimmigrant status, the alien (1) Has suffered physical or mental abuse as a result of having been a victim of certain criminal activity; (2) possesses information concerning such criminal activity; (3) has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the crime; and (4) the criminal activity violated the laws of the United States or occurred in the United States. This section of the **SUPPLEMENTARY INFORMATION** describes each statutory eligibility requirement for U nonimmigrant status and this rule's implementation of each requirement.

1. Victims of Qualifying Criminal Activity Who Have Suffered Physical or Mental Abuse

The first eligibility requirement for U nonimmigrant status is that the alien must have suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. INA sec. 101(a)(15)(U)(i)(I), 8 U.S.C. 1101(a)(15)(U)(i)(I). This interim rule defines the following terms that relate to this eligibility requirement: Victims of qualifying criminal activity, physical or mental abuse, and qualifying crime or qualifying criminal activity. New 8 CFR 214.14(a). These definitions are discussed below.

a. Victims of Qualifying Criminal Activity

The meaning of ''victim of qualifying criminal activity'' is provided by new 8 CFR 214.14(a)(14). Within this definition, the rule provides for indirect victims of the criminal activities in the case of deceased victims of murder and manslaughter and victims of violent criminal activity who are incapacitated or incompetent. See new 8 CFR 214.14(a)(14)(i). The definition also clarifies how victims of witness tampering, obstruction of justice, and perjury can constitute victims of qualifying criminal activity. *See* new 8 CFR 214.14(a)(14)(ii). This interim rule also excludes alien victims who are themselves culpable of criminal activity from the definition of victim, subject to certain exceptions. *See* 8 CFR 214.14(a)(14)(iii).

(i) Direct Victims

This rule generally defines ''victim of qualifying criminal activity'' as an alien who is directly and proximately harmed by qualifying criminal activity. 8 CFR 214.14(a)(14). To formulate the general definition, USCIS drew from established definitions of ''victim.'' Federal statutory provisions consistently define ''victim'' as one who has suffered direct harm or who is directly and proximately harmed as a result of the commission of a crime. *See e.g.*, 42 U.S.C. 10603(c) (relating to terrorism); 18 U.S.C. 3663(a)(2) (relating to restitution); 18 U.S.C. 3771(e) (relating to crime victim rights); Fed. R. Crim. P. 32(a)(2) (defining victim for sentencing purposes); *see also United States* v. *Terry,* 142 F.3d 702, 710–11 (4th Cir. 1998) (reviewing the possible definitions of ''victim''). The Department of Justice's (DOJ's) Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines) adopts a similar definition of the term ''victim.'' See Attorney General Guidelines for Victim and Witness Assistance at 9 (May 2005) (*http://www.ojp.usdoj.gov/ovc/publications/welcome.html*). The AG Guidelines serve to guide federal investigative, prosecutorial, and correctional agencies in the treatment of crime victims and, therefore, were viewed by USCIS as an informative resource in the development of this rule's definition of victim.[4]

The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims. AG Guidelines at 10. The AG Guidelines, however, provide DOJ personnel discretion to treat as victims bystanders who suffer unusually direct injuries as victims. USCIS does not anticipate approving a significant number of applications from bystanders, but will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers an unusually direct injury as a result of a qualifying crime. An example of an unusually direct injury suffered by a bystander would be a pregnant

significant public benefit; the entry is not deemed to be an admission to the United States. INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); 8 CFR 212.5. A stay of deportation or removal is an administrative decision to stop temporarily the deportation or removal of an alien who has been ordered deported or removed from the United States. See 8 CFR 241.6; 8 CFR 1241.6. Deferred action is an exercise of prosecutorial discretion that defers the removal of the alien based on the alien's case being made a lower priority for removal. Immigration and Customs Enforcement, Department of Homeland Security, Detention and Deportation Officer's Field Manual, ch. 20.8 (2005). Deferred action does not confer any immigration status upon an alien.

[4] The AG Guidelines, and some of the aforementioned statutes, also include pecuniary crimes within the scope of qualifying activities. The BIWPA, however, limits the qualification requirements to aliens who suffer substantial physical or mental abuse and did not expressly reference pecuniary crimes. Therefore, pecuniary crimes are not included as qualifying criminal activities for U nonimmigrant status. In addition, the AG Guidelines include business entities in the definition of ''victim.'' USCIS, however, only grants non-immigrant status to individuals, not to business entities and therefore limits the definition of ''victim'' under this rule to persons.

bystander who witnesses a violent crime and becomes so frightened or distraught at what occurs that she suffers a miscarriage.

(ii) Indirect Victims

USCIS believes that the U nonimmigrant classification contemplates encompassing certain indirect victims in addition to direct victims. This is because the list of qualifying criminal activity at section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), includes the crimes of murder and manslaughter, the direct targets of which are deceased. The list also includes witness tampering, obstruction of justice, and perjury, which are not crimes against a person. Therefore, this rule extends the definition of victim beyond the direct victim of qualifying criminal activity in certain circumstances. *See* new 8 CFR 214.14(a)(14)(i) & (ii).

The AG Guidelines also cover those persons who are not direct victims of a crime where the direct victim is deceased as a result of the qualifying crime (e.g. murder or manslaughter), incompetent or incapacitated, or under the age of 18. AG Guidelines, at 9. In these situations, the direct victim is not available or sufficiently able to help in an investigation or prosecution of the criminal activity. *Id.* The AG Guidelines list such indirect victims to be a spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court. *Id.* Under the AG Guidelines, however, only the first available person on the list is eligible to be considered a victim. *Id.* For instance, the parent of a murder victim is only considered a victim if his or her child is unmarried. The spouse, as the first person on the list, would be deemed the victim.

Drawing from the AG Guidelines in conjunction with the U classification statutory provision describing qualifying family members (section 101(a)(15)(U)(ii) of the INA, 8 U.S.C. 1101(a)(15)(U)(ii)), this rule extends the victim definition to the following list of indirect victims in the case of murder, manslaughter, or incompetent or incapacitated victims: Spouses; children under 21 years of age; [5] and, if the direct victim is or was under 21 years of age, parents and unmarried siblings under 18 years of age. *See* new 8 CFR 214.14(a)(14)(i). This rule does not extend the victim definition beyond these family members since the U nonimmigrant classification does not apply to other individuals. Unlike the AG Guidelines, the rule does not restrict the victim definition only to the first available person on the list of indirect victims. USCIS has determined that such a restrictive definition of victim would not adequately serve the purpose behind the U nonimmigrant classification. Family members of murder, manslaughter, incompetent, or incapacitated victims frequently have valuable information regarding the criminal activity that would not otherwise be available to law enforcement officials because the direct victim is deceased, incapacitated, or incompetent. By extending the victim definition to include certain family members of deceased, incapacitated, or incompetent victims, the rule encourages these family members to fully participate in the investigation or prosecution. Extending immigration benefits only to the first available person on the AG Guidelines list could separate families and lead to anomalous results. For example, in the case of a mother who is murdered and leaves behind her husband and young children, extending benefits only to the husband, as the first person on the list, could leave minor children without U nonimmigrant status protection.

USCIS notes, however, that while family members on the list of indirect victims under this rule may apply for U nonimmigrant status in their own right as principal petitioners, there is no requirement that they do so. For example, in the scenario described above of a mother who is murdered and leaves behind a husband and minor children, the husband and minor children could each apply as principal petitioners. In the alternative, the husband could file as a principal petitioner and the children could be included as family members on his petition, as will be discussed later in this Supplementary Information. Likewise, the children potentially could be principal petitioners and their father (the husband of the deceased), could be included as a family member on one of the children's petitions. Family members who are recognized as indirect victims and, therefore, eligible to apply for U nonimmigrant status as principal petitioners must meet all of the eligibility requirements that the direct victim would have had to meet in order to be accorded U nonimmigrant status.

In the case of witness tampering, obstruction of justice, or perjury, the interpretive challenge for USCIS was to determine whom the BIWPA was meant to protect, given that these criminal activities are not targeted against a person. USCIS looked to the purpose of the BIWPA—to encourage cooperation with criminal investigations and protect vulnerable victims (BIWPA sec. 1502)—and to the federal definitions of the term ''victim.'' As discussed above, in order to be classified as a victim under Federal law, an individual must suffer direct and proximate harm. Therefore, USCIS considered which categories of people would suffer direct and proximate harm from witness tampering, obstruction of justice, and perjury. USCIS identified one such category as individuals who are harmed when a perpetrator commits one of the three crimes in order to avoid or frustrate the efforts of law enforcement authorities. USCIS identified another such category as individuals who are harmed when the perpetrator uses the legal system to exploit or impose control over them.

Accordingly, this rule provides that a victim of witness tampering, obstruction of justice, or perjury is an alien who has been directly and proximately harmed by the perpetrator of one of these three crimes, where there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means: (1) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of or undue control over the alien through manipulation of the legal system. New 8 CFR 214.14(a)(14)(ii). In developing this definition, USCIS considered whether or not the criminal activity of witness tampering, obstruction of justice, or perjury must have been committed in relation to one of the other qualifying crimes listed in the statute. However, the text of section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), listing qualifying criminal activity explicitly states that the criminal activity must involve ''one or more'' of the 27 categories of crimes listed. USCIS reads the phrase ''one or more'' to mean that each of the crimes listed thereafter may qualify independently. Therefore, this rule does not require such a nexus.

(iii) Culpability of the Victim

This rule excludes a person who is culpable for the qualifying criminal activity being investigated or prosecuted from being deemed a victim. *See* new 8 CFR 214.14(a)(14)(iii). Although the statutory provision at section 101(a)(15)(U)(i) of the INA, 8 U.S.C. 1101(a)(15)(U)(i), describing who qualifies as a U nonimmigrant neither explicitly covers nor explicitly excludes culpable persons, USCIS believes that this exclusion is warranted.

[5] Qualifying children also must be unmarried. See INA sec. 101(b), 8 U.S.C. 1101(b).

This exclusion does not apply to an alien who committed a crime other than the one under investigation or prosecution, even if the crimes are related. For instance, an alien who agrees to be smuggled into the United States, but is then held in involuntary servitude may still be deemed to be a victim of involuntary servitude even though he or she also may be culpable in the smuggling crime and for illegally entering the United States. USCIS has concluded that, while it is reasonable to exclude culpable individuals from being defined as a victim, it is not reasonable to exclude individuals simply based on any criminal activity in which they may have at one time engaged. USCIS notes that this approach of distinguishing between those who are culpable for the qualifying crime and those who are culpable for other crimes is supported by the AG Guidelines. *See* AG Guidelines, at 10.

b. Physical or Mental Abuse

This rule defines physical or mental abuse to mean injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim. New 8 CFR 214.14(a)(8). In considering how to define the term physical or mental abuse, USCIS examined existing regulations that use similar terms. In particular, USCIS looked to regulations promulgated following the enactment of VAWA 1994 that allow battered spouses and children of U.S. citizens and lawful permanent residents to seek immigration status. *See* 8 CFR 204.2(c), 216.5(e)(3). These regulations use the terms ''battery'' and ''extreme cruelty'' to refer to any act or threatened act of violence that results in physical or mental injury. *See* 8 CFR 204.2(c)(2)(vi); 8 CFR 216.5(e)(3)(i). Battery and extreme cruelty are terms that the regulations use interchangeably with the term ''abuse.'' *See* 8 CFR 204.2(c)(1)(vi); (2)(iv); 216.5(e)(3)(i); and 216.5(e)(3)(iii).

The term, ''physical or mental abuse,'' encompasses a wide range of physical or mental harm. Section 101(a)(15)(U)(i)(I) of the INA, 8 U.S.C. 1101(a)(15)(U)(i)(I), which establishes this as a requirement, qualifies ''physical or mental abuse'' with the term, ''substantial.'' The statutory provision does not make clear, however, whether the standard of ''substantial'' physical or mental abuse is intended to address the severity of the injury suffered by the victim, or the severity of the abuse inflicted by the perpetrator. USCIS has concluded that it is reasonable to consider both. Rather than define what constitutes abuse that is ''substantial,'' however, USCIS believes that a better approach would be to make case-by-case determinations, using factors as guidelines.

This rule lists a number of factors USCIS will consider when determining whether the physical or mental abuse at issue qualifies as substantial. New 8 CFR 214.14(b)(1). These factors are: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. Through these factors, USCIS will be able to evaluate the kind and degree of harm suffered by the individual applicant based upon that applicant's individual experience. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial.

USCIS recognizes the possibility that some victims will have a pre-existing physical or mental injury or condition at the time of the abuse. In evaluating whether the harm is substantial, this rule requires USCIS to consider the extent to which any pre-existing conditions were aggravated. *Id.* Some abuse may involve a series of acts or occur repeatedly over a period of time. USCIS will consider the abuse in its totality to determine whether the abuse is substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level. *Id.*

c. Qualifying Criminal Activity

The statutory list of qualifying criminal activity in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), is not a list of specific statutory violations, but instead a list of general categories of criminal activity. It is also a non-exclusive list. Any similar activity to the activities listed may be a qualifying criminal activity. This interim rule adopts the statutory list of criminal activity and further defines what constitutes ''any similar activity.'' *See* new 8 CFR 214.14(a)(9). The rule provides that for a criminal activity to be deemed similar to one specified on the statutory list, the similarities must be substantial. USCIS bases this definition on the fact that the statutory list of criminal activity is not composed of specific statutory violations. Instead, the criminal activity listed is stated in broad terms. The rule's definition of ''any similar activity'' takes into account the wide variety of state criminal statutes in which criminal activity may be named differently than criminal activity found on the statutory list, while the nature and elements of both criminal activities are comparable. In addition, qualifying criminal activity may occur during the commission of non-qualifying criminal activity. For varying reasons, the perpetrator may not be charged or prosecuted for the qualifying criminal activity, but instead, for the non-qualifying criminal activity. For example, in the course of investigating Federal embezzlement and fraud charges, the investigators discover that the perpetrator is also abusing his wife and children, but because there are no applicable Federal domestic violence laws, he is charged only with non-qualifying Federal embezzlement and fraud crimes.

2. Possession of Information Concerning the Qualifying Criminal Activity

In passing the BIWPA, Congress wanted to encourage aliens who are victims of criminal activity to report the criminal activity to law enforcement and fully participate in the investigation and prosecution of the perpetrators of such criminal activity. BIWPA sec. 1513(a)(1)(B). The second eligibility requirement for U nonimmigrant status is that the alien must possess information about the qualifying criminal activity of which he or she is a victim. INA sec. 101(a)(15)(U)(i)(II), 8 U.S.C. 1101(a)(15)(U)(i)(II). This rule adopts this statutory requirement at new 8 CFR 214.14(b)(2). Possessing information about a crime of which the alien is not a direct or indirect victim would not satisfy this requirement and, therefore, is not included in the rule.

USCIS will consider an alien victim to possess information concerning qualifying criminal activity of which he or she was a victim if he or she has knowledge of the details (i.e., specific facts) concerning the criminal activity that would assist in the investigation or prosecution of the criminal activity. *See* new 8 CFR 214.14(b)(2). The findings that Congress expressed in sections 1513(a)(1) and (2) of the BIWPA make clear that the intent behind the creation of U nonimmigrant status was to facilitate the investigation and prosecution of criminal activity of which immigrants are targets while providing protection for victims of such criminal activity. USCIS believes that, to give effect to congressional intent, the information that the alien must possess must be related to the crime of which he or she is a victim. If not, the stated purpose of the statute is thwarted. Possession of information concerning

the criminal activity necessarily means that the alien must have knowledge of it.

When the alien victim is under 16 years of age, the statute does not require him or her to possess information regarding the qualifying criminal activity. Rather, the parent, guardian, or next friend of the alien victim may possess that information if the alien victim does not. INA sec. 101(a)(15)(U)(i)(II), 8 U.S.C. 1101(a)(15)(U)(i)(II). This rule reiterates this exception at new 8 CFR 214.14(b)(2). This provision specifies that the age of the alien victim on the day on which an act constituting an element of the qualifying criminal activity first occurred is the applicable age to consider for purposes of establishing whether the exception is triggered. The purpose of the exception is to allow for alternative mechanisms for possessing information when a child is at an age where he or she may be too young to adequately understand and relay traumatic and sensitive information. As such, USCIS believes that the date on which the qualifying criminal activity began is the appropriate date for triggering this exception.

The rule also permits a parent, guardian, or next friend to provide information when the alien victim is incapacitated or incompetent. New 8 CFR 214.14(b)(2). Permitting certain family members or guardians to act in lieu of incapacitated or incompetent victims is supported by the AG Guidelines, at 9.

This rule also defines the term ''next friend.'' New 8 CFR 214.14(a)(7). An individual will qualify as a next friend under this rule if he or she appears in a lawsuit to act for the benefit of an alien who is under the age of 16 or who is incapacitated or incompetent. *See Whitmore* v. *Arkansas*, 495 U.S. 149, 163–4 (1990) (describing next friend as someone dedicated to the best interests of the individual who cannot appear on his or her own behalf because of inaccessibility, mental incompetence, or other disability). The next friend is not a party to the legal proceeding and is not appointed as a guardian.

3. Helping Law Enforcement in the Investigation or Prosecution of Criminal Activity

The third eligibility requirement for U nonimmigrant status is that the alien victim of qualifying criminal activity (or, in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been, is being, or is likely to be helpful to a government official or authority in the investigation or prosecution of the qualifying criminal activity. INA sec. 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III). This requirement is set forth in new 8 CFR 214.14(b)(3), which further provides that the alien victim cannot refuse or fail to provide reasonably requested information and assistance in order to remain eligible for U nonimmigrant status. The rule also provides for alien victims who are incompetent or incapacitated. Additionally, this rule provides that the official or authority receiving the assistance be a ''certifying agency,'' as defined in new 8 CFR 214.14(a)(2).

a. Helpfulness

USCIS interprets ''helpful'' to mean assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. USCIS is excluding from eligibility those alien victims who, after initiating cooperation, refuse to provide continuing assistance when reasonably requested. New 8 CFR 214.14(b)(3). USCIS believes that the statute imposes an ongoing responsibility on the alien victim to provide assistance, assuming there is an ongoing need for the applicant's assistance. USCIS bases this interpretation on the plain text of the statutory provision that sets forth this requirement. *See* INA sec. 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III). The requirement was written with several verb tenses, recognizing that an alien may apply for U nonimmigrant status at different stages of the investigation or prosecution. By allowing an individual to petition for U nonimmigrant status upon a showing that he or she may be helpful at some point in the future, USCIS believes that Congress intended for individuals to be eligible for U nonimmigrant status at the very early stages of an investigation. This suggests an ongoing responsibility to cooperate with the certifying official while in U nonimmigrant status. If the alien victim only reports the crime and is unwilling to provide information concerning the criminal activity to allow an investigation to move forward, or refuses to continue to provide assistance to an investigation or prosecution, the purpose of the BIWPA is not furthered. *See* BIWPA sec. 1513(a)(2).

In addition, in order to qualify for permanent resident status on the basis of the U nonimmigrant classification, the alien must not have unreasonably refused to provide assistance in a criminal investigation or prosecution. INA sec. 245(m)(1), 8 U.S.C. 1255(m)(1). This requirement further suggests an ongoing responsibility to cooperate with the certifying official while in U nonimmigrant status.

An exception to the helpfulness requirement applies to alien victims who are under 16 years of age. Such alien victims can satisfy the helpfulness requirement if their parent, guardian, or next friend provides the required assistance. INA sec. 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(III). This exception is the same exception applicable to the previous requirement that the alien victim possess information regarding the criminal activity. *See* new 8 CFR 214.14(b)(2). This rule reiterates the exception with respect to the helpfulness requirement at new 8 CFR 214.14(b)(3). The provision specifies that the age of the victim on the day on which an act constituting an element of the qualifying criminal activity first occurred is the applicable age to consider for purposes of establishing whether the exception is triggered. New 8 CFR 214.14(b)(3). It also extends the exception to individuals who are incapacitated or incompetent and allows a parent, guardian, or next friend to be helpful in those instances. *Id.*

b. Certifying Agency

This rule requires that the assistance in the investigation or prosecution of qualifying criminal activity be provided to a ''certifying agency.'' As discussed later in this Supplementary Information, an alien victim must include a certification from such agency in support of his or her request for U nonimmigrant status. INA sec. 214(p)(1), 8 U.S.C. 1184(p)(1).

A ''certifying agency'' is one of the government officials and entities identified in the statute that is investigating or prosecuting qualifying criminal activity. INA sec. 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III). The rule defines a ''certifying agency'' as a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of the qualifying criminal activities designated in the BIWPA. New 8 CFR 214.14(a)(2). This includes traditional law enforcement branches within the criminal justice system. However, USCIS also recognizes that other agencies, such as child protective services, the Equal Employment Opportunity Commission, and the Department of Labor, have criminal investigative jurisdiction in their respective areas of expertise. The rule specifies these agencies. *See id.*

The rule provides that the term ''investigation or prosecution,'' used in the statute and throughout the rule, includes the detection or investigation of a qualifying crime or criminal activity, as well as the prosecution, conviction, or sentencing of the perpetrator of such crime or criminal activity. New 8 CFR 214.14(a)(5). Referring to the AG Guidelines, USCIS is defining the term to include the detection of qualifying criminal activity because the detection of criminal activity is within the scope of a law enforcement officer's investigative duties. AG Guidelines, at 22–23. Also referring to the AG Guidelines, USCIS is defining the term to include the conviction and sentencing of the perpetrator because these extend from the prosecution. *Id.* at 26–27. Moreover, such inclusion is necessary to give effect to section 214(p)(1) of the INA, 8 U.S.C. 1184(p)(1), which permits judges to sign certifications on behalf of U nonimmigrant status applications. INA sec. 214(p)(1), 8 U.S.C. 1184(p)(1). Judges neither investigate crimes nor prosecute perpetrators. Therefore, USCIS believes that the term ''investigation or prosecution'' should be interpreted broadly as in the AG Guidelines.

4. Criminal Activity That Violated U.S. Law or Occurred in the United States

The fourth requirement for U nonimmigrant classification is that the qualifying criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States. INA 101(a)(15)(U)(i)(IV), 8 U.S.C. 1101(a)(15)(U)(i)(IV). This requirement is adopted in new 8 CFR 214.14(b)(4).

The term United States is defined in section 101(a)(38) of the INA, 8 U.S.C. 1101(a)(38), to mean the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands. The BIWPA does not define the term ''Indian country,'' but for purposes of this rule, USCIS is adopting the definition contained in 18 U.S.C. 1151. Under this rule, ''Indian country'' means all land within the limits of any Indian reservation under the jurisdiction of the United States, all dependent Indian communities within the borders of the United States, and all Indian allotments. New 8 CFR 214.14(a)(4). Although 18 U.S.C. 1151 is a criminal jurisdiction statute, tribal and federal courts have applied this statutory definition to both criminal and civil matters. *See California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202, 208 n.5 (1996).

Similarly, the term ''military installation'' is not defined in the BIWPA. This rule defines that term as meaning any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, or any location under military control, including any leased facility. New 8 CFR 214.14(a)(6). To develop this definition, USCIS looked to other statutory definitions of the term. *See, e.g.,* 10 U.S.C. 2687(e) (defining the term in the context of base closures and realignments); 10 U.S.C. 2801(c)(2) (relating to military construction). A review of the federal case law reveals that this is a nebulous concept with no absolute definition. *United States* v. *Buske*, 2 M.J. 465, 467 (A.C.M.R. 1975). In order to realize the purpose of the U nonimmigrant classification, to facilitate criminal investigations and prosecutions, USCIS interpreted the term broadly to encompass a wide range of military locations.

New 8 CFR 212.14(a)(11) defines the term ''territories and possessions of the United States'' to mean American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Serranilla Bank, and Wake Atoll. This definition is based on current information that the Department of Interior provided to USCIS. Although Guam, Puerto Rico, and the U.S. Virgin Islands are also considered territories or possessions of the United States, USCIS has not included them in this regulatory definition because they are already incorporated into the INA definition of United States. *See* INA sec. 101(a)(38), 8 U.S.C. 1101(a)(38).

Section 101(a)(15)(U)(i)(IV) of the INA, 8 U.S.C. 1101(a)(15)(U)(i)(IV), requires that the criminal activity either violated the laws of the United States or occurred in the United States. USCIS does not believe that this distinction is based on which laws are violated—U.S. laws or foreign laws—because elsewhere in the statute, qualifying criminal activity is defined as criminal activity that is ''in violation of Federal, State, or local criminal law.'' *See* INA sec. 101(a)(15)(U)(iii), 8 U.S.C. 1101(a)(15)(U)(iii). Instead, USCIS believes that the distinction refers to where the violation occurred, whether inside or outside the United States. Accordingly, USCIS interprets the phrase, ''occurred in the United States,'' to mean qualifying criminal activity that occurred in the United States that is in violation of U.S. law. USCIS interprets the phrase, ''violated the laws of the United States,'' as referring to criminal activity that occurred outside the United States that is in violation of U.S. law.

This rule provides that criminal activity that has occurred outside of the United States, but that fits within a type of criminal activity listed in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), will constitute a qualifying criminal activity if it violates a federal statute that specifically provides for extraterritorial jurisdiction. *See* new 8 CFR 214.14(b)(4). Such criminal activity will have ''violated the laws of the United States.'' Congress has enacted a variety of statutes governing criminal activity occurring outside the territorial limits of the United States. These statutes establish extraterritorial and federal, criminal jurisdiction. Statutes establishing extraterritorial jurisdiction generally require some nexus between the criminal activity and U.S. interests. For example, pursuant to 18 U.S.C. 2423(c), the United States has jurisdiction to investigate and prosecute cases involving U.S. citizens or nationals who engage in illicit sexual conduct outside the United States, such as sexually abusing a minor. *See also* 18 U.S.C. 32 (destruction of an aircraft); 15 U.S.C. 1 (extraterritorial application of the Sherman Act governing antitrust laws).

This rule does not require that the prosecution actually occur, since the statute only requires an alien victim to be helpful in the investigation or the prosecution of the criminal activity. *See* INA sections 101(a)(15)(U)(i)(III) & 214(p)(1), 8 U.S.C. 1101(a)15(u)(i)(III) and 1184(p)(1). Prosecution may be impossible due to a number of factors, such as an inability to extradite the defendant.

B. Application Process

By statute, the petition for U nonimmigrant status must be filed by the alien victim and contain a certification of helpfulness from a certifying agency. *See* INA sec. 214(p)(1), 8 U.S.C. 1184(p)(1). Based upon these statutory requirements, this rule designates the form that petitioners must use to request U nonimmigrant status and describes the evidence that must accompany the form, including the certification of helpfulness. The rule also sets forth filing requirements and procedures. This section of the **SUPPLEMENTARY INFORMATION** discusses these requirements, as well as eligibility and filing requirements for those qualifying family members of the alien victim who also are seeking U nonimmigrant status.

1. Filing the Petition To Request U Nonimmigrant Status

This interim rule designates Form I–918, ''Petition for U Nonimmigrant Status,'' as the form an alien victim must use to request U nonimmigrant status. *See* New 8 CFR 214.14(c)(1), This provision also requires petitioners to follow the instructions to Form I–918 for proper completion and accompany Form I–918 with initial evidence and the correct fee(s).[6] Form I–918 requests information regarding the applicant's eligibility for U nonimmigrant status and admissibility to the United States. Jurisdiction over all petitions for U nonimmigrant status rests with USCIS. The instructions to Form I–918 specify where petitioners must file (by mail) their application package. At present, USCIS has centralized the adjudication process for Forms I–918 at its Vermont Service Center. This centralization will allow adjudicators to develop expertise in handling U nonimmigrant petitions and provide for uniformity in the adjudication of these petitions.

The rule addresses several special considerations that may affect certain petitioners seeking to file Form I–918: Filing petitions from outside the United States; the effect of a petition on interim relief; petitioners subject to grounds of inadmissibility; petitioners in removal proceedings or subject to a final order of exclusion, deportation, or removal; changing nonimmigrant classifications; and the effect of a petition on other immigration benefits. These considerations are discussed below.

a. Alien Victims of Qualifying Criminal Activity Filing Form I–918 From Outside the United States

This interim rule does not require petitioners to file Form I–918 from within the United States. USCIS has determined that the statutory framework for U nonimmigrant status permits alien victims of qualifying criminal activity to apply for U nonimmigrant status classification from either inside or outside the United States. For example, the statute does not require petitioners to be physically present in the United States to qualify for U nonimmigrant status. By contrast, other nonimmigrant classifications, such as the T nonimmigrant classification (INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T)), explicitly require an alien's physical presence in the United States as a condition of eligibility. Moreover, under section 101(a)(15)(U)(i)(IV) of the INA, 8 U.S.C. 1101(a)(15)(U)(i)(IV), qualifying criminal activity may occur outside the territorial jurisdiction of the United States under certain circumstances. USCIS recognizes that for qualifying criminal activity that occurred outside the United States, the investigation may take place either outside or inside the United States. The alien victim may be needed in the United States to assist the certifying agency in its investigation or subsequent prosecution of the criminal activity. Allowing alien victims to submit petitions from outside the United States provides the certifying agency with the necessary flexibility to further the investigation or prosecution.

To apply from outside the United States, petitioners must submit a complete application package for U nonimmigrant status to the USCIS location specified in the form instructions.

b. Petitioners With Interim Relief From Removal

This rule does not impose a deadline for submission of U nonimmigrant status petitions. However, USCIS encourages petitioners and accompanying or following to join family members who were granted interim relief to file Form I–918 within 180 days of the effective date of this rule. After the effective date of this rule, the interim relief process will no longer be in effect, and USCIS will not consider initial requests for interim relief. After the 180-day time period following the effective date of the rule, USCIS will reevaluate previous grants of deferred action, parole, and stays of removal and terminate such interim relief for those aliens who fail to file Form I–918 within the 180-day time period. However, if the alien has properly filed a Form I–918, but USCIS has not yet adjudicated that petition, interim relief will be extended until USCIS completes its adjudication of Form I–918. USCIS believes that 180 days provides an interim relief recipient a sufficient period of time within which to file and perfect a U nonimmigrant petition, taking into account the time it may take for individuals to learn of this rule and put together a complete package requesting U nonimmigrant status.

c. Petitioners Who Are Inadmissible

To be eligible for U nonimmigrant status, the alien requesting status must be admissible to the United States. 8 CFR 214.1(a)(3)(i); *see also* INA sec. 214(a)(1), 8 U.S.C. 1184(a)(1). Therefore, those who are inadmissible to the United States, or who become inadmissible for conduct that occurs while their petition for U nonimmigrant status is pending, will not be eligible for U nonimmigrant status unless the ground of inadmissibility is waived by USCIS. See INA sec. 212(a), 8 U.S.C. 1182(a) (grounds of inadmissibility). USCIS has general authority to waive many grounds of inadmissibility for nonimmigrants and may prescribe conditions on their temporary admission to the United States. See INA sec. 212(d)(3)(B), 8 U.S.C. 1182(d)(3)(B).

In addition, the BIWPA created a waiver specific to U nonimmigrant status. Under this waiver, the Secretary of Homeland Security has the discretion to waive any ground of inadmissibility with respect to applicants for U nonimmigrant status, except the ground applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings. INA sec. 212(d)(14), 8 U.S.C. 1182(d)(14). However, the Secretary of Homeland Security first must determine that such a waiver would be in the public or national interest. *Id.*

It is important to note that the determination that a waiver would be in the public or national interest and the decision to grant a waiver are made at the discretion of the Secretary. In the immigrant context, the Board of Immigration Appeals has held that, in assessing whether an applicant has met the burden that a waiver is warranted in the exercise of discretion, the adjudicator must balance adverse factors evidencing inadmissibility as a lawful permanent resident with the social and humane considerations presented to determine if the grant of the waiver appears to be in the best interests of the United States. *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996). More recently, in the context of a case involving a waiver of a criminal ground of inadmissibility under section 209(c) of the Act, the Attorney General determined that favorable discretion should not be exercised for waivers under section 212(h) of the Act involving violent or dangerous crimes, except in extraordinary circumstances. *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002).

In view of these considerations, this rule provides a general rule that DHS will only exercise favorable discretion in U nonimmigrant status cases in which a waiver for violent or dangerous crimes or the security and related grounds under section 212(a)(3) of the Act is requested, in extraordinary circumstances. Moreover, depending on the nature and severity of the underlying offense/s to be waived, the Secretary retains the discretion to determine that the mere existence of

[6] A fee waiver is available for the Form I–918 filing fee. Fee waivers are governed by 8 CFR 103.7(c).

extraordinary circumstances is insufficient.

Additionally, this rule provides that the Secretary will not exercise discretion under section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), to waive the ground of inadmissibility under section 212(a)(3)(E) applicable to participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killings. New 8 CFR 212.17(b). Because Congress determined not to make a waiver available for this ground of inadmissibility in the waiver provision created for U nonimmigrant applicants at section 212(d)(14) of the Act, DHS has determined that it would not be logical to allow these applicants to be eligible for a waiver of this ground of inadmissibility under section 212(d)(3) of the Act.

To apply for a waiver of inadmissibility, a petitioner must file Form I–192, ''Application for Advance Permission to Enter as Nonimmigrant,'' with USCIS. New 8 CFR 212.17(a); new 8 CFR 214.14(c)(2)(iv). USCIS will evaluate the application to determine whether it is in the public or national interest to exercise discretion to waive the applicable ground(s) of inadmissibility. New 8 CFR 212.17(b)(1). As with inadmissibility waiver applications for other nonimmigrant classifications, there is no appeal of a decision to deny Form I–192. New 212.17(b)(2); *see also* 8 CFR 212.4(a)(1). This rule also provides that an applicant whose waiver application is denied is not prevented from re-filing a request for a waiver. New 8 CFR 212.17(b)(2). This is to allow those petitioners whose Forms I–918 and concurrently filed Forms I–192 are denied an opportunity to have a subsequently filed Form I–192 considered in the context of other immigration benefits.

USCIS has determined that implicit in its discretionary authority to grant a waiver is the authority to determine the conditions under which a waiver is granted, including revocation of previously granted waiver. Therefore, this interim rule establishes USCIS' authority to revoke its approval of a waiver of inadmissibility that was previously granted. The decision to revoke a waiver is not appealable. New 8 CFR 212.17(c).

d. Petitioners Who Are in Removal, Deportation, or Exclusion Proceedings or Who Are Subject to a Final Order of Removal, Deportation, or Exclusion

Aliens who are in removal proceedings under section 240 of the INA, 8 U.S.C. 1229a, or in deportation or exclusion proceedings under former sections 242 and 236 of the INA, 8 U.S.C. 1252, 1226 (as in effect before April 1, 1997), or who are the subject of a final order of removal, deportation, or exclusion, may be eligible for U nonimmigrant status.[7] Because jurisdiction over U nonimmigrant petitions rests solely with USCIS, aliens who are in removal proceedings or who are subject to a final removal order nevertheless must file their petition for U nonimmigrant status directly with USCIS. Filing a petition for U nonimmigrant status will not affect the proceedings or the order. However, in instances in which the U nonimmigrant status petitioner or a derivative family member of the petitioner listed on the Form I–918 is in removal, deportation, or exclusion proceedings before the Immigration Court or has a matter pending before the Board of Immigration Appeals (Board),[8] this rule provides that the alien may seek the agreement of DHS' Bureau of Immigration and Customs Enforcement (ICE)[9] to file a joint motion to terminate the proceedings without prejudice while a petition for U nonimmigrant status is being adjudicated by USCIS.[10] New 8 CFR 214.14(c)(1)(i) and (f)(2)(i). The joint motion to terminate must be filed with the Immigration Court or the Board, whichever has jurisdiction. *Id.* The agreement to pursue termination of the pending proceedings lies within the sole prosecutorial discretion of ICE. DHS is including a specific provision on motions to terminate in this rule to identify a mechanism that conserves prosecutorial resources with respect to a class of aliens who are providing assistance in investigating and prosecuting criminal activity.

This rule further provides that if proceedings are terminated, and USCIS subsequently denies the petition for U nonimmigrant status, DHS may file a new Notice to Appear[11] to place the individual into proceedings again. New 8 CFR 214.14(c)(5)(ii) and (f)(6)(iii).

With respect to petitioners who are the subject of an administrative final order, this rule provides that they are not precluded from filing a petition for U nonimmigrant status directly with USCIS. New 8 CFR 214.14(c)(1)(ii) and (f)(2)(ii). However, the filing of a petition for U nonimmigrant status has no effect on ICE's authority to execute a final order. Therefore, those aliens subject to a final order of removal, deportation, or exclusion who are physically present in the United States should apply separately for a discretionary stay of removal if they wish to remain in the United States while their petition is pending with USCIS. To do so, such aliens must file Form I–246, ''Application for Stay of Removal,'' as provided in 8 CFR 241.6(a) and 8 CFR 1241.6(a). For those petitioners who are subject to a final order of removal and are detained in ICE's custody while USCIS adjudicates their petition, rules of detention still apply. Under the post-order detention rules, an alien who has been subject to post-order detention for more than six months (dating from the beginning of the removal period as described in INA § 241(a)(1)) may request release from detention. See 8 CFR 241.13. If, after six months of post-order detention, the alien can provide ''good reason to believe there is no significant likelihood of removal * * * in the reasonably foreseeable future,'' the alien, with certain exceptions, will be released on an order of supervision. 8 CFR 241.13(a); see *Zadvydas* v. *Davis*, 533 U.S. 678, 701 (2001); Clark v. Martinez, 543 U.S. 371, 386 (2005). However, under this rule, the time during which a stay of removal is in effect will extend

[7] An order of deportation is an order issued prior to April 1, 1997, in deportation proceedings, to an alien physically present in the United States requiring the alien to leave the United States. *See* INA sec. 242B, 8 U.S.C. 1252b (1996) *repealed by* IIRIRA, Pub. L. 104–208, div. C., sec. 308(b)(6), 110 Stat. 3009, 3615 (effective April 1, 1997). An order of exclusion is an order issued prior to April 1, 1997, in exclusion proceedings, that refuses the admission to the United States of an alien who is physically outside the United States (or who is treated as being so). *See generally* INA sec. 236, 8 U.S.C. 1226 (1996) (amended by IIRIRA sec. 303(a), 110 Stat. at 3585). Since April 1, 1997, there has been one unified removal process for persons formerly subject to deportation and exclusion proceedings; this process may result in the issuance of a removal order by either DHS or an immigration judge. INA sec. 240(a)(3), 8 U.S.C. 1229a(a)(3) (added by IIRIRA sections 304(a)(3) & 309(d)(2), 110 Stat. at 3587–3589, 3627). During proceedings, DHS or an immigration judge makes a determination regarding whether an alien is removable from the United States. INA sec. 240(c)(1), 8 U.S.C. 1229a(c)(1). If such a determination is made, a removal order is issued ordering the alien to leave the United States. INA sec. 240(c)(5), 8 U.S.C. 1229a(c)(5). The alien must leave the United States on his or her own, or will be returned to his or her country of origin (or in some cases to a third country that agrees to accept that person) by the United States. See INA sections 240B & 241, 8 U.S.C. 1229c & 1231.

[8] The Immigration Court and Board of Immigration Appeals are within the Department of Justice's Executive Office for Immigration Review. *See* 8 CFR 1003.0(a).

[9] ICE counsel are authorized to represent DHS in Immigration Court and before the Board. *See* 6 U.S.C. 252(c); DHS Delegation No. 7030.2, para. 2(C).

[10] While this rule specifically addresses joint motions to terminate, it does not preclude the parties from requesting a continuance of the proceeding.

[11] Removal proceedings are initiated when an alien is provided notice of proceedings through the service of a Notice to Appear. The contents of the Notice to Appear are prescribed in section 239(a)(1) of the Act.

the period of detention reasonably necessary to bring about the petitioner's eventual removal. New 8 CFR 214.14(c)(1)(ii) and (f)(2)(ii). As the petitioner has, of his or her own choosing, requested that his or her removal be stayed, the reasonably necessary period for removal justifiably is extended. ICE will have a full and fair period to effect removal if USCIS denies the petition. See 8 CFR 241.4.

If USCIS grants the petition for U nonimmigrant status, an order of exclusion, deportation, or removal issued by the Secretary will be canceled by operation of law as of the date of the grant. New 8 CFR 214.14(c)(5)(i) & (f)(6). However, if USCIS subsequently revokes approval of the petition, DHS may place the petitioner in removal proceedings. In cases where an order of exclusion, deportation, or removal was issued by an immigration judge or the Board, the alien may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23. *Id.*

e. Aliens Seeking Change of Nonimmigrant Classification

Aliens who currently are in a nonimmigrant status may seek to change their classification to the U nonimmigrant classification. Section 248 of the INA, 8 U.S.C. 1258, and implementing regulations at 8 CFR 248 govern change of nonimmigrant classification. These provisions permit nonimmigrants to change status to another nonimmigrant classification, unless they fall within certain nonimmigrant classifications. INA sec. 248(a)(1)–(4), 8 U.S.C. 1258(a)(1)–(4); 8 CFR 248.2. For example, aliens classified under sections 101(a)(15)(C), (D), (K), or (S) of the INA, 8 U.S.C. 1101(a)(15)(C), (D), (K), or (S), as well as certain aliens classified under section 101(a)(15)(J) of the INA, 8 U.S.C. 1101(a)(15)(J), may not change nonimmigrant status. VAWA 2005 amended section 248 of the INA, 8 U.S.C. 1258, so that even aliens within the excepted classifications may seek a change of nonimmigrant status if the status sought is U nonimmigrant status. INA sec. 248(b), 8 U.S.C. 1258(b). This rule adopts this statutory amendment in revised 8 CFR 248.2(b) and makes structural modifications to 8 CFR 248.2 to accommodate the revisions. The rule also clarifies that the procedures for applying for U nonimmigrant status, even when changing nonimmigrant status, are contained in new 8 CFR 214. Revised 8 CFR 248.1(a).

f. Aliens Seeking Other Immigration Benefits

Aliens seeking U nonimmigrant status are free to seek any other immigration benefit or status for which they are eligible. INA sec. 214(p)(5), 8 U.S.C. 1184(p)(5). Therefore, nothing in this rule limits a qualified petitioner from applying for U nonimmigrant status as well as other immigration benefits, including immigrant status. However, USCIS will only grant one nonimmigrant or immigrant status at a time. Where multiple applications or petitions are filed and pending at the same time, USCIS will grant the status for the application or petition that is approved first. USCIS will deny any remaining petitions or applications for status.

2. Initial Evidence

This rule requires petitioners filing Form I–918 to accompany the petition with supporting documentation, or ''initial evidence,'' in order for USCIS to consider the request for U nonimmigrant status complete. New 8 CFR 214.14(c)(1). If all required initial evidence is not submitted with the petition or does not demonstrate eligibility, USCIS, in its discretion, may deny the application for lack of initial evidence or for ineligibility, or request that the missing or insufficient initial evidence be submitted within a specified period of time as determined by USCIS. 8 CFR 103.2(b)(8)(ii). This rule provides the following list of required initial evidence:

- Form I–918, Supplement B, ''U Nonimmigrant Status Certification,'' properly and timely executed;
- Any additional evidence the petitioner wants USCIS to consider to establish further that:
  - —The petitioner is a victim of qualifying activity;
  - —The petitioner has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity;
  - —The petitioner possesses information concerning the qualifying criminal activity of which he or she was a victim;
  - —The petitioner has been, is being, or is likely to be helpful to a certifying agency;
  - —The criminal activity is qualifying and occurred in the United States, including in Indian country and military installations, or the territories and possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. Federal court;
- A statement by the petitioner describing the facts of the victimization; and
- If the petitioner is inadmissible, Form I–192, ''Application for Advance Permission to Enter as Non-Immigrant.''

New 8 CFR 214.14(c)(2).

a. U Nonimmigrant Status Certification

This rule designates Form I–918, Supplement B, ''U Nonimmigrant Status Certification,'' as the form that petitioners must obtain from a certifying official of a certifying agency. New 8 CFR 214.14(c)(2)(i). Form I–918, Supplement B must be prepared by the certifying agency conducting an investigation or prosecution of the qualifying criminal activity in accordance with the instructions to the form, and must have been signed by the certifying official within the six months immediately preceding the submission of Form I–918. *Id.* USCIS is setting a six-month requirement to seek a balance between encouraging the filing of petitions and preventing the submission of stale certifications. USCIS believes that this requirement provides petitioners enough time to prepare the necessary paperwork for the petition package, while also precluding the situation where petitioners delay filing the package until some time after the certification is signed, and they cease to be helpful to the certifying agency. If a petitioner requested and received interim relief prior to the effective date of this rule, USCIS will consider the evidence submitted to meet the certification requirements for interim relief purposes in lieu of Form I–918, Supplement B. New 8 CFR 214.14(c)(1).

This rule defines ''certifying official'' as the head of the certifying agency or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or a Federal, State, or local judge. New 8 CFR 214.14(a)(3). USCIS believes that this definition is reasonable and necessary to ensure the reliability of certifications. It also should encourage certifying agencies to develop internal policies and procedures so that certifications are properly vetted.

Under this rule, the certifying official must affirm the following in the certification: (1) That the person signing the certificate is the head of the certifying agency or person(s) in a supervisory role who has been specifically designated with the authority to issue U nonimmigrant

status certifications on behalf of that agency, or a Federal, State, or local judge; (2) that the agency is a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; (3) that the petitioner has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; (4) that the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; (5) that the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and (6) that the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories and possessions, Indian country, or at military installations abroad. New 8 CFR 214.14(c)(2)(i). The certification also should provide relevant, specific details about the nature of the crime being investigated or prosecuted and describe, in detail, the petitioner's helpfulness to the case.

USCIS developed the requirements for Form I–918, Supplement B based upon the eligibility requirements petitioners must meet and the purposes for which the certification will be used. USCIS determined that since the certifying agency is the primary point of contact between the petitioner and the criminal justice system, the certifying agency is in the best position to verify certain factual information. In addition, USCIS does not believe that petitioners are in the best position to know the specific violation of U.S. law the certifying agency is investigating or prosecuting, or what specific statute provides the certifying agency with the extraterritorial jurisdiction to investigate or prosecute criminal activity that occurred outside the United States. Therefore, USCIS determined that information regarding the eligibility requirements should be addressed by the certifying agency on Form I–918, Supplement B. USCIS will use Form I–918, Supplement B in the course of adjudicating whether the eligibility requirements have been met.

b. Additional Evidence To Satisfy the Eligibility Requirements

While USCIS will give a properly executed certification on Form I–918, Supplement B, significant weight, USCIS will not consider such certification to be conclusory evidence that the petitioner has met the eligibility requirements. USCIS believes that it is in the best position to determine whether a petitioner meets the eligibility requirements as established and defined in this rule. In addition to Form I–918, Supplement B, this interim rule permits the petitioner to provide any additional evidence that is relevant and credible to help demonstrate that the petitioner meets each of the eligibility requirements. New 8 CFR 214.14(c)(2)(ii) and (iii). For petitioners with interim relief, USCIS will consider evidence previously submitted with the request for interim relief as part of the petition package. Petitioners with interim relief may file additional evidence with Form I–918 to supplement this previously submitted evidence. New 8 CFR 214.14(c)(1).

Evidence to further establish that the petitioner is a victim of qualifying criminal activity may include: trial transcripts, court documents, news articles, police reports, orders of protection, and affidavits of other witnesses, such as medical personnel.

Evidence to further establish the nature of the abuse suffered may include such documentation as reports and affidavits from police, judges, other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Petitioners who have obtained an order of protection against the perpetrator or taken other legal steps to protect themselves against the perpetrator should submit copies of the relating legal documents. A combination of documents such as a photograph of the visibly injured applicant supported by affidavits of individuals who have personal knowledge of the facts regarding the criminal activity may be relevant as well.

Evidence to further establish that the petitioner possesses information about the qualifying criminal activity may include documents establishing that he or she has knowledge of the details of the criminal activity. Examples of relevant evidence include: reports and affidavits from police, judges, and other court officials. In cases where the petitioner is a child under the age of 16, or is incapacitated or incompetent, this requirement can be satisfied by the parent, guardian, or next friend submitting the necessary evidence on behalf of the petitioner. Such person must provide evidence of his or her qualifying relationship to the petitioner and evidence establishing the age, incapacity, or incompetence of the petitioner. Examples of such evidence include: birth certificates, court documents demonstrating recognition of an individual as the petitioner's next friend, medical records, or reports of licensed medical professionals demonstrating the incapacity or incompetence of the applicant.

Evidence to further establish that the petitioner has provided the necessary assistance in the investigation or prosecution of qualifying criminal activity may include such documentation as: Trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and affidavits of other witnesses or officials. If USCIS has reason to believe that there is a question about the petitioner's helpfulness to, or continuing cooperation with, the investigation or prosecution, USCIS may contact the certifying official for further explanation. In cases where the petitioner is a child under the age of 16 or is incapacitated or incompetent, this requirement can be satisfied by the parent, guardian, or next friend submitting the necessary evidence on behalf of the petitioner. Such person must provide evidence of their qualifying relationship to the petitioner and evidence that the petitioner is a child under the age of 16, incapacitated, or incompetent. Evidence that was submitted to satisfy the possession of information requirement will satisfy this requirement and need not be submitted twice.

Examples of evidence to further establish that the criminal activity is qualifying and violated U.S. law or occurred in the United States include: A copy of the statutory provision(s) showing the elements of the offense or factual information about the crime demonstrating that it is similar to the list of qualifying criminal activity contained in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii). If the criminal activity occurred outside the United States, the additional evidence submitted may include a copy of the statutory provision(s) providing for the extraterritorial jurisdiction and documentation showing that the criminal activity violated federal law and is prosecutable in a federal court.

c. Statement by the Petitioner

In support of Form I–918, this rule requires the petitioner to submit a separate statement describing the facts of his or her victimization. 8 CFR 214.14(c)(2)(iii). USCIS is requiring that the petitioner submit a statement because USCIS believes that it is important to learn about the facts of the victimization from the petitioner in his or her own words. This statement should include the following information: The nature of the criminal activity, when the criminal activity occurred, who was responsible, the

events surrounding the criminal activity, how the criminal activity came to be investigated or prosecuted, and what substantial physical and/or mental abuse was suffered as a result of having been the victim of the criminal activity. The statement also may include information supporting any of the other eligibility requirements.

When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend must submit a statement in lieu of the petitioner that contains as much information surrounding the criminal activity and physical and/or mental abuse as possible.

d. Petitioners Who Are Inadmissible

As stated earlier in this Supplementary Information, this rule requires petitioners seeking a waiver of inadmissibility to file Form I–192, ''Application for Advance Permission to Enter as Nonimmigrant.'' New 8 CFR 212.17(a). USCIS has listed the Form I–192 in this rule as initial evidence which must be filed concurrently with Form I–918, along with a separate filing fee. New 8 CFR 214.14(c)(2)(iv). Form I–192 is an established form to waive grounds of inadmissibility for aliens seeking immigration benefits. *See*, *e.g.*, 8 CFR 212.4 (general authority for waivers in nonimmigrant cases); 8 CFR 212.16 (providing for use of Form I–192 in T nonimmigrant status cases).

3. Derivative Family Members

Section 101(a)(15)(U)(ii) of the INA, 8 U.S.C. 1101(a)(15)(U)(ii), permits certain family members accompanying or following to join the alien victim to obtain U nonimmigrant status, regardless of whether or not they are in the United States or overseas. USCIS refers to such family members as derivatives, and the alien victim as the principal. Which family members are considered ''qualifying'' depends on the age of the principal. If the principal is under 21 years of age, qualifying family members include the principal's spouse, children, unmarried siblings under 18 years of age (on the filing date of the principal's petition), and parents. INA sec. 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I). If the principal is 21 years of age or older, qualifying family members include the spouse and children of the principal. INA sec. 101(a)(15)(U)(ii)(II), 8 U.S.C. 1101(a)(15)(U)(ii)(II). This rule provides the eligibility requirements and petition procedures for qualifying family members seeking derivative status. *See* new 8 CFR 214.14(f).

a. Eligibility

New 8 CFR 214.14(f)(1) sets forth two eligibility requirements for derivative U nonimmigrant status. First, the alien must be a qualifying family member. New 8 CFR 214.14(f)(1)(i). Second, the alien must be admissible to the United States. New 8 CFR 214.14(f)(1)(ii); *see also* INA sec. 214(a)(1), 8 U.S.C. 1184(a)(1); 8 CFR 214.1(a)(3)(i).

Generally, in order to be considered a qualifying family member, the relationship between the principal petitioner and the family member must exist at the time Form I–918 was filed. New 8 CFR 214.14(f)(4). The relationship must continue to exist at the time the petition for derivative status is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States. *Id.* Otherwise, the family member would not meet section 101(a)(15)(U)(ii) of the INA, 8 U.S.C. 1101(a)(15)(U)(ii), describing who qualifies as a family member.

Note that parents are only considered qualifying family members if the principal is under 21 years of age and a ''child.'' New 8 CFR 214.14(f)(1). Although the statutory language at section 101(a)(15)(U)(ii), 8 U.S.C. 1101(a)(15)(U)(ii), naming parents as qualifying family members does not specify that the principal must be a child under the age of 21 for the parents to qualify, USCIS believes that this qualification is required by section 101(b)(2) of the INA, 8 U.S.C. 1101(b)(2). This provision defines the term, ''child,'' as an unmarried person under 21 years of age. INA sections 101(b)(1), 8 U.S.C. 1101(b)(1).

A special rule applies to unmarried siblings under age 18 of petitioners who are under 21 years of age. For such siblings, the statute provides that the siblings' age on the date that Form I–918 is filed is controlling. INA sec. 101(a)(15)(U)(ii)(I), 8 U.S.C. 1101(a)(15)(U)(ii)(I). Therefore, in new 8 CFR 214.14(f)(4)(ii), if the principal petitioner was under 21 years of age, and requested U nonimmigrant status for an unmarried sibling under the age of 18 at the time Form I–918 was filed, USCIS will continue to consider such sibling as a qualifying family member for purposes of U nonimmigrant status at the time of adjudication even if circumstances change. This rule also provides that children born to the principal petitioner after Form I–918 has been filed will be eligible for derivative U nonimmigrant status. New 8 CFR 214.14(f)(4)(i).

This rule excludes certain qualifying family members from eligibility. Section 204(a)(1)(L) of the INA, 8 U.S.C. 1154(a)(1)(L), prohibits an alien victim from petitioning for derivative U nonimmigrant status on behalf of a qualifying family member who committed battery or extreme cruelty or trafficking against the alien victim which established his or her eligibility for U nonimmigrant status. The rule incorporates this prohibition at new 8 CFR 214.14(f)(1). USCIS has interpreted the prohibition as applying to qualifying family members who committed qualifying criminal activity in a family violence or trafficking context. In making this determination, USCIS considered the plain text of section 204(a)(1)(L) of the INA, 8 U.S.C. 1154(a)(1)(L), and found it to be unclear regarding its intended application. In addition to trafficking, the statute lists battery and extreme cruelty as disqualifying activity even though those terms are not listed as qualifying criminal activity in section 101(a)(15)(U)(iii) of the INA, 8 U.S.C. 1101(a)(15)(U)(iii), and are not included in the standard of harm necessary to establish eligibility for U nonimmigrant status. However, when the terms battery or extreme cruelty are used in other contexts in the INA, they are used to refer to harm occurring as a result of domestic violence or child abuse. *See* INA sections 204(a)(1)(A) & (B), 216(c)(4)(C), 240A(b)(2), 8 U.S.C. 1154(a)(1)(A) & (B), 1186(c)(4)(C), 1229b. USCIS believes it is reasonable to conclude that by using these terms, Congress intended to prohibit approval of petitions for U nonimmigrant status where the petition is based on qualifying criminal activity for which the qualifying family member is responsible that occurred in a family violence or trafficking context.

b. Filing Procedures

This rule requires that a principal petitioner for U nonimmigrant status or a principal alien who has been granted U nonimmigrant status must petition for derivative status on behalf of qualifying family members by submitting a Form I–918, Supplement A, ''Petition for Qualifying Family Member of U–1 Recipient,'' for each qualifying family member. New 8 CFR 214.14(f)(2). Principal petitioners can file Form I–918, Supplement A either at the same time or after filing his or her Form I–918. *Id.* Principal aliens who have already received U nonimmigrant status may file Form I–918, Supplement A at any time while maintaining U nonimmigrant status. *Id.* This provides principals with maximum flexibility to request derivative status for qualifying family members.

This rule further requires that Form I–918, Supplement A must be accompanied by supporting evidence (''initial evidence'') and the fees required by the instructions to the form. *Id.* If the principal petitioner files Form I–918, Supplement A while his or her Form I–918 is pending adjudication with USCIS, the principal petitioner must accompany Form I–918, Supplement A with a copy of his or her Form I–918. *Id.* If the principal already has been granted U nonimmigrant status, then he or she must accompany Form I–918, Supplement A with a copy of the Form I–94 he or she received when the Form I–918 was approved. *Id.* This will be considered evidence of the principal's U nonimmigrant status. Requiring evidence of the principal's pending petition or status will enable USCIS to match up the derivative petition with the principal's petition.

New 8 CFR 214.14(f)(3) sets forth the initial evidence that must accompany each Form I–918, Supplement A: (1) Evidence of the family member's qualifying relationship with the principal; and (2) if the alien is inadmissible under section 212(a) of the INA, 8 U.S.C. 1182(a), Form I–192, with fee. Such initial evidence corresponds to the two eligibility requirements for derivative U nonimmigrant status.

4. Designations

This rule amends 8 CFR 214.1(a)(1) to codify the derivative subclassifications established by section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U). *See* new 8 CFR 214.1(a)(1)(ix). In addition, the rule provides for the following designations for qualifying family members of the principal applicant (U–1): Spouse (U–2), child (U–3), the child's parents (U–4), and siblings (U–5). New 8 CFR 214.14(f)(1). This rule likewise adds these designations to current 8 CFR 214.1(a)(2), to add to the list of designations assigned to all other nonimmigrant classifications. These designations are a matter of administrative convenience, providing a shorthand notation for identifying the principal petitioner and each derivative based upon the relationship to the principal.

C. Adjudication and Post-Adjudication

The statutory provisions establishing U nonimmigrant status contain a number of parameters guiding the adjudication of U nonimmigrant petitions. Specifically, in determining whether to grant U nonimmigrant status, the statute requires that the adjudicator consider any credible evidence relevant to the petition. *See* INA sec. 214(p)(4), 8 U.S.C. 1184(p)(4). In addition, the statute protects information relating to applicants for U nonimmigrant status from disclosure. 8 U.S.C. 1367(a)(2). Moreover, the statute precludes adjudicators from making adverse determinations on inadmissibility or deportability with respect to petitions for U nonimmigrant status based on information provided by the perpetrator of abuse and criminal activity. 8 U.S.C. 1367(a)(1)(E). The number of grants of U nonimmigrant status that may be made in a fiscal year is limited by an annual cap of 10,000. INA sec. 214(p)(2), 8 U.S.C. 1184(p)(2).

In this section of the **SUPPLEMENTARY INFORMATION**, these parameters are discussed, as well as the steps that follow a decision to grant or deny a petition for U nonimmigrant status.

1. Credible Evidence

This rule adopts the statutory requirement that any credible evidence relevant to the petition must be considered in the adjudication of petitions for U nonimmigrant status. New 8 CFR 214.14(c)(4) & (f)(5). As in the case of all other immigration benefits, the burden of establishing eligibility for U nonimmigrant status rests with the petitioner. *Id.* USCIS will consider all evidence de novo and will not be bound by any of its prior determinations made during the course of adjudicating an application for interim relief on any essential element of U nonimmigrant status. *Id.* A grant of interim relief means only that the alien presented *prima facie* evidence that he or she was eligible for U nonimmigrant status and does not constitute a binding determination that any given eligibility requirement had been proven. In adjudicating Form I–918, USCIS will review all evidence submitted in conjunction with the interim relief application along with any additional evidence submitted by the petitioner in conjunction with his or her Form I–918, including the certification, Form I–918, Supplement B.

This rule also provides that USCIS may review documentation submitted by the alien in conjunction with any other applications he or she has made for immigration benefits in the past. *Id.* This will enable USCIS to review the petition for U nonimmigrant status in the context of the petitioner's past immigration history and verify that statements made in his or her petition are consistent with information he or she provided to USCIS in the past. In addition, this rule provides that USCIS may investigate any aspect of the petition. *Id.* This means that if, during its adjudication of Form I–918, USCIS has reason to believe that there is a question about the petitioner's helpfulness to, or continuing cooperation with, the investigation or prosecution, or any other aspect of the petition, USCIS may contact the certifying official for further explanation. USCIS then will be able to verify the veracity of the contents of the petition and safeguard the integrity of the U nonimmigrant status program.

2. Prohibitions on Disclosure of Information

Information concerning U nonimmigrant petitioners is protected against disclosure in two ways. *See* 8 U.S.C. 1367. First, adverse determinations of admissibility or deportability cannot be made based on information obtained solely from the perpetrator of substantial physical or mental abuse and the criminal activity. 8 U.S.C. 1367(a)(1)(E). Second, the disclosure of information relating to the beneficiary of a pending or approved petition for U nonimmigrant status is prohibited except in certain circumstances. 8 U.S.C. 1367(a)(2). The statute allows information to be released to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of either of those Departments, for legitimate Department, bureau, or agency purposes. *Id.*

There are eight specific exemptions from the general nondisclosure rule:

(1) At the discretion of the Secretary of Homeland Security or Attorney General, officials may disclose information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8.

(2) At the discretion of the Secretary of Homeland Security or Attorney General, officials may provide for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.

(3) In connection with judicial review of a determination, information may be disclosed in a manner that protects the confidentiality of such information.

(4) Information may be disclosed if all the crime victims in the case are adults, and they have waived the general restrictions on disclosure of information provided by 8 U.S.C. 1367(a)(2).

(5) Information may be disclosed to Federal, State, and local public and private agencies providing benefits, to be used solely to make determinations of eligibility for benefits pursuant to 8 U.S.C. 1641(c).

(6) Information may be disclosed after a petition for U nonimmigrant status has been finally denied.

(7) Information may be disclosed on closed cases to the chairmen and ranking members of the Committee on the Judiciary of the Senate, or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided the disclosure is made in a manner that protects the confidentiality of the information and omits personally identifying information (including locational information about individuals).

(8) With prior written consent from the principal petitioner or derivative family member, information may be disclosed to nonprofit, nongovernmental victims' service providers for the sole purpose of assisting the victim in obtaining victim services from programs with expertise working with immigrant victims.

8 U.S.C. 1367(b). Appropriate disciplinary action must be taken and a monetary penalty of up to $5,000 may be imposed on anyone who willfully uses, publishes, or permits information to be disclosed in violation of the nondisclosure provisions. 8 U.S.C. 1367(c). This rule incorporates the prohibitions and restrictions on information relating to U nonimmigrant petitions into new 8 CFR 214.14(e).

Within the bounds of the statutory prohibitions and restrictions against disclosure of information relating to a U nonimmigrant petitioner, USCIS may provide information taken from the petition about any Federal, State or local crimes to investigative agencies that have a reason to know based on a legitimate law enforcement purpose. Possible agencies or bureaus to which information may be disclosed include: The Federal Bureau of Investigation (FBI); the U.S. Attorney's Office or the Civil Rights or Criminal Divisions of the Department of Justice; or U.S. Immigration and Customs Enforcement (ICE). As part of the adjudication process, USCIS also may contact the certifying agency for the purpose of assessing whether the petitioner is, has been, or is likely to be helpful to the investigation or prosecution of the qualifying criminal activity. Because the certifying agency has submitted a certification on behalf of the petitioner and, therefore, has already been informed about the fact of the petition as well as the facts upon which the petition is based, USCIS has determined that contacting the certifying agency would not violate the statutory prohibitions and restrictions against disclosure. USCIS recognizes the sensitive nature of application information and takes seriously its obligation to protect confidentiality. USCIS will make any disclosure to an investigative agency in a manner that provides the maximum confidentiality under the circumstances.

In addition to disclosures to investigative agencies, DHS may have an obligation to provide portions of petitions for U nonimmigrant status to federal prosecutors for disclosure to defendants in pending criminal proceedings. This obligation stems from constitutional requirements that pertain to the government's duty to disclose information, including exculpatory evidence or impeachment material, to defendants. See U.S. Const. amend. V & VI; Brady v. Maryland, 373 U.S. 83, 87 (1963); Giglio v. United States, 405 U.S. 150, 154 (1972). Accordingly, this rule incorporates this requirement at new 8 CFR 214.14(e)(1)(ix).

3. Annual Numerical Limitation on Grants of U Nonimmigrant Status

Before USCIS may grant U nonimmigrant status, it must consider the statutory cap on the number of aliens who may receive a grant of status each fiscal year. *See* INA sec. 214(p)(2), 8 U.S.C.1184(p)(2). No more than 10,000 principal aliens may be granted U nonimmigrant status in a given fiscal year (October 1 through September 30). INA sec. 214(p)(2)(A), 8 U.S.C. 1184(p)(2)(A). This numerical limitation does not apply to spouses, children, parents, and unmarried siblings who are accompanying or following to join the principal alien victim. INA sec. 214(p)(2)(B), 8 U.S.C. 1184(p)(2)(B).

USCIS anticipates that within the first few fiscal years after publication of this regulation, it will receive petitions for U nonimmigrant status from more than 10,000 principal aliens. USCIS is cognizant of the fact that law enforcement agencies and prosecutors need a stable mechanism through which to regularize the status of victims and witnesses, but is equally cognizant of the fact that Congress saw fit to limit the number of aliens who may be granted U nonimmigrant status in any given fiscal year. USCIS has determined that to balance the statutorily imposed numerical cap against the dual goals of enhancing law enforcement's ability to investigate and prosecute criminal activity and providing protection to alien victims of crime, it will create a waiting list should the cap be reached in a given fiscal year before all petitions are adjudicated. USCIS's goal is to respect the intent of the numerical limitation imposed by Congress while still allowing the legislation to achieve maximum efficacy. USCIS believes that this rule's waiting list methodology will provide a stable mechanism through which victims cooperating with law enforcement agencies can regularize their immigration status.

Under this rule, once the numerical limit has been reached in a particular fiscal year, all pending and subsequently submitted petitions will continue to be reviewed in the normal process to determine eligibility. *See* new 8 CFR 214.14(d)(2). USCIS will deny petitions that are not approvable. Eligible petitioners who are not granted U–1 nonimmigrant status due solely to the numerical limits will be notified by USCIS that they have been placed on a waiting list. *Id.* Each fiscal year, as new numbers for U–1 nonimmigrant status become available, USCIS will grant U nonimmigrant status to petitioners on the waiting list. *Id.* Petitioners on the waiting list will be given priority based on the date the petition was properly filed. *Id.* Petitioners on the waiting list must continue to meet the eligibility requirements for U nonimmigrant status and be admissible at the time status is granted. *Id.* After USCIS has granted U nonimmigrant status to petitioners on the waiting list, USCIS will continue to grant petitions, up to the annual limit, to new petitioners in the order in which each petition was properly filed. *Id.*

This rule also provides that, USCIS will give petitioners on the waiting list deferred action or parole until the start of the next fiscal year. *Id.* Those petitioners will be eligible to apply for employment authorization. *Id.* The rule further provides that petitioners on the waiting list will not accrue unlawful presence under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B). New 8 CFR 214.14(d)(3). However, at its discretion, USCIS may remove a petitioner from the waiting list and terminate deferred action or parole. *Id.* For example, USCIS may terminate deferred action or parole if the petitioner is convicted of a crime that renders him or her removable. USCIS also may terminate deferred action or parole if it becomes aware that a petitioner has failed to disclose a criminal conviction or has misrepresented a material fact in his or her petition.

4. Decisions on Petitions

USCIS will issue decisions granting or denying U nonimmigrant petitions in writing. New 8 CFR 214.14(c)(5) (principal petitioners); new 8 CFR 214.14(f)(6) (derivative family members). If USCIS denies a petition, it will also provide reasons for the denial in writing. New 8 CFR 214.14(c)(5)(ii); new 8 CFR 214.14(f)(6)(iii). In any case in which USCIS denies a petition for U

nonimmigrant status, the petitioner may appeal to USCIS's Administrative Appeals Office (AAO) under established procedures outlined in 8 CFR 103.3. *Id.*

a. Granting U Nonimmigrant Status

If USCIS finds that the petitioner has satisfied the requirements for U nonimmigrant status, it will grant U nonimmigrant status to the petitioner and derivative family members, unless the annual numerical limit applicable to principal petitioners has been reached. New 8 CFR 214.14(c)(5)(i); new 8 CFR 214.14(f)(6). If a number is available for the principal petitioner, USCIS will send a notice of approval on Form I–797, ''Notice of Action,'' to the principal petitioner or, if the principal petitioner is overseas, to the Department of State for forwarding to the appropriate U.S. Embassy or Consulate or to the appropriate port of entry (visa exempt alien). New 8 CFR 214.14(c)(5)(i)(A) and (B). USCIS also will send to the principal petitioner a notice of approval on Form I–797 for derivative family members for whom USCIS has approved Form I–918, Supplement A. New 8 CFR 214.14(f)(6)(i) and (ii). If a number is not available, USCIS will notify the petitioner that, in accordance with new 8 CFR 214.14(d)(2), he or she has been placed on the waiting list, given deferred action or parole, and may request employment authorization. USCIS will also grant deferred action or parole to derivative family members with an opportunity to request employment authorization. New 8 CFR 214.14(d)(2).

For those principal petitioners and derivative family members who are within the United States, a Form I–94, ''Arrival-Departure Record,'' indicating U nonimmigrant status will be attached to the approval notice and will constitute evidence that the petitioner has been granted U nonimmigrant status. New 8 CFR 214.14(c)(5)(i)(A); new 8 CFR 214.14(f)(6)(i). For those principal petitioners or qualifying family members who are outside the United States, USCIS will follow the standard procedures for issuing grants as applied to other nonimmigrant categories. USCIS will forward the notice of approval to the Department of State for delivery to the U.S. Embassy or Consulate designated on the petition, which should be the U.S. Embassy or Consulate having jurisdiction over the area in which the alien is located, or to the appropriate port of entry for a visa exempt alien. New 8 CFR 214.14(c)(5)(i)(B); new 8 CFR 214.14(f)(6)(ii).[12] The principal petitioner and any derivative family members should file for a U nonimmigrant visa with the designated U.S. Embassy or Consulate or port of entry. If granted, the visa can be used to travel to the United States for admission as a U nonimmigrant.

This rule provides that principal petitioners and derivative family members who were granted interim relief and whose petition for U nonimmigrant status is approved will be accorded U nonimmigrant status as of the date that the request for U interim relief was approved. New 8 CFR 214.14(c)(6); new 8 CFR 214.14(f)(6)(i). USCIS has determined that according status as of the date that interim relief was approved is appropriate so that the time a petitioner spent with interim relief will count towards the three years of continuous physical presence in U nonimmigrant status required before the petitioner may adjust status to that of a lawful permanent resident under section 245(m) of the INA, 8 U.S.C. 1255(m). Memorandum from Michael Aytes, Acting Associate Director, Domestic Operations, USCIS, Applications for U Nonimmigrant Status (Jan. 6, 2006). In fact, the House Report for VAWA 2005 indicates that members of Congress expect this result. *See* H.R. Rep. No. 109–233, at 114 (2005); *see also* 151 Cong. Rec. E2605, E2608 (statement of Representative John Conyers). Therefore, under this rule, recipients of U nonimmigrant status will be eligible to submit an application to adjust status three years after the date that interim relief was accorded, rather than having to wait until three years after the date on which USCIS approves their petition for U nonimmigrant status.

b. Duration of U Nonimmigrant Status

Section 214(p)(6) of the INA, 8 U.S.C. 1184(p)(6), provides that the duration of U nonimmigrant status cannot exceed four years. Extensions are permitted upon certification from a certifying agency that the alien's presence in the United States is required to assist in the investigation or prosecution of qualifying criminal activity. This rule incorporates this provision in new 8 CFR 214.14(g).

New 8 CFR 214.14(g)(1) provides that U nonimmigrant status for both principals (U–1) and derivative family members (U–2, U–3, U–4, and U–5) may be approved for a period not to exceed an aggregate of four years. Because derivative status is based on the principal's status, derivative status initially will be approved for a period that does not exceed the period initially approved for the principal. New 8 CFR 214.14(g)(1). Just as with all other nonimmigrant classifications, the U nonimmigrant's Form I–94 issued to evidence status will indicate the approved period of stay. For petitioners who were previously accorded interim relief, USCIS necessarily will indicate on Form I–94 an approved period of stay that is less than four years. Therefore, for example, USCIS will issue a petitioner, who was accorded interim relief two years ago, a Form I–94 reflecting an approved period of stay for up to another two years upon the grant of U nonimmigrant status.

This rule further provides that U nonimmigrants can apply for an extension of status in two circumstances. A U nonimmigrant may apply for an extension of status where his or her status was granted for an approved period of stay of less than four years in the aggregate. New 8 CFR 214.14(g)(2)(i). This may be the case, for example, where a U nonimmigrant is outside the United States and experiences delays in consular processing. Because the petition for U nonimmigrant status is granted for a specified four-year period, which runs from the date of approval by USCIS, delays in entering the United States would mean that the alien would not be admitted to the United States in U nonimmigrant status until after a portion of the four-year period stated in the approved petition has already run.

The rule specifically addresses the situation where an overseas derivative family member receives an approved period of stay that expires on the same date as the principal's, but that is less than four years because the derivative was unable to enter the United States in a timely fashion due to delays in consular processing. Under this rule, such derivative may apply for an extension of status even though the principal cannot since the principal's period of stay was already approved for a four-year period. New 8 CFR 214.14(g)(2)(i). Necessarily, an approved period of stay based upon such extension of status application will exceed the date on which the principal's approved period of stay expired. The reason for this provision is so that the derivative is able to attain at least three years in U nonimmigrant status. Such period of time in U nonimmigrant status is necessary before the alien may apply to adjust status to that of a lawful permanent resident pursuant to section

[12] A visa exempt alien is an alien for whom a valid, unexpired passport is not required for admission to the United States. INA sec. 212(d)(4)(B), 8 U.S.C. 1182(d)(4)(B); 8 CFR 212.1(i).

245(m) of the INA, 8 U.S.C. 1255(m). To permit extensions of status for derivatives in this rule, USCIS considered the text of section 214(p)(6) of the INA, 8 U.S.C. 1184(p)(6). This statutory provision applies the four-year limit for U nonimmigrant status to all U nonimmigrants equally, and not just to principal petitioners. In addition, it does not include a requirement that the derivative's period of stay run concurrently with the principal's period of stay.

To apply for an extension of U nonimmigrant status under new 8 CFR 214.14(g)(2)(i), this rule provides that the U nonimmigrant must file Form I–539, ''Application to Extend/Change Nonimmigrant Status,'' in accordance with the instructions to the form. USCIS requires this application of most nonimmigrants seeking to extend or change their nonimmigrant status. USCIS cannot grant an extension to exceed an aggregate period of four years in U nonimmigrant status. *Id.*

If the aggregate period of four years in U nonimmigrant status has been reached, a U nonimmigrant nevertheless may apply for an extension of status beyond such period if the certifying official attests that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of the qualifying criminal activity. New 8 CFR 214.14(g)(2)(ii). Therefore, in order to obtain an extension of U nonimmigrant status on this basis, the U nonimmigrant must file Form I–539 in accordance with the instructions to the form and a newly executed Form I–918, Supplement B. *Id.*

5. Benefits for U Nonimmigrants

Section 214(p)(3) of the INA, 8 U.S.C. 1184(p)(3), directs the Secretary of Homeland Security to provide those granted U nonimmigrant status certain benefits along with their status. The Secretary of Homeland Security and other government officials, where appropriate, must provide U nonimmigrants referrals to nongovernmental organizations which can advise such nonimmigrants of their options while in the United States and the resources available to them. INA sec. 214(p)(3)(A), 8 U.S.C. 1184(p)(3)(A). In addition, the Secretary of Homeland Security must provide employment authorization to U nonimmigrants. INA sec. 214(p)(3)(B), 8 U.S.C. 1184(p)(3)(B). This rule implements these requirements in new 8 CFR 214.14(c)(5), (c)(7), (f)(6), and (f)(7), 8 CFR 274a.12(a)(19) and (20), and 8 CFR 274a.13(a).

a. Referrals to Nongovernmental Organizations

New 8 CFR 214.14(c)(5) and (f)(6) adopt the requirement in section 214(p)(3)(A), 8 U.S.C. 1184(p)(3)(A), that, where appropriate, USCIS provide U nonimmigrants referrals to nongovernmental organizations. USCIS has determined that it is appropriate to provide such referrals to all U nonimmigrants, including principals and derivatives alike, because, as crime victims or family members of crime victims, they may be in need of additional assistance and information. Accordingly, new 8 CFR 214.14(c)(5) and (f)(6) require USCIS to include in the notice approving the U nonimmigrant petition a list of nongovernmental organizations. The nongovernmental organizations that will be included on the list are those that can provide information and advice regarding the U nonimmigrant's options while in the United States, including information regarding options for long-term immigration relief. Such organizations can also provide the principal with necessary resource tools.

b. Employment Authorization

This rule provides for automatic employment authorization upon a grant of U nonimmigrant status, implementing the requirement at section 214(p)(3)(B) of the INA, 8 U.S.C. 1184(p)(3)(B), that the Secretary of Homeland Security confer employment authorization on aliens granted U nonimmigrant status. Under new 8 CFR 214.14(c)(7) and 8 CFR 214.14(f)(7), principal aliens and derivative family members granted U nonimmigrant status are employment authorized incident to their U nonimmigrant status. This is also reflected in new 8 CFR 274a.12(a)(19) and (20), where the rule adds these two new categories of aliens to the existing list of aliens who are employment authorized incident to status. Automatically conferring employment authorization obviates the need for the ministerial step of affirmatively granting employment authorization during the adjudication of each petition.

c. Evidence of Employment Authorization

In addition to conferring employment authorization automatically on U nonimmigrants, this rule also provides for the issuance of evidence of employment authorization, an Employment Authorization Document (EAD). To do so, this rule amends 8 CFR 274a.12(a) and 274a.13(a), which govern employment authorization documentation for all classes of aliens. This rule also includes more specific provisions regarding employment authorization documentation for U nonimmigrants in new 8 CFR 214.14(c)(7) and 214.14(f)(7).

The EAD can serve as evidence of both employment authorization and identity. 8 CFR 274a.2(b)(1)(v)(A)(4). Aliens seeking new employment or maintaining current employment can present their EAD to employers verifying employment authorization and identity pursuant to the requirements of section 274A(b) of the INA, 8 U.S.C. 1324a(b), and 8 CFR 274a.2.

For principal aliens seeking their first EAD based upon U nonimmigrant status, USCIS will use the information contained in Form I–918 to automatically generate an EAD, such that a separate request for an EAD is not necessary. *See* new 8 CFR 214.14(c)(7). USCIS has designed the Form I–918 so that it serves the dual purpose of requesting U nonimmigrant status and employment authorization to streamline the application process. Therefore, principal aliens will not have to file additional paperwork to obtain an initial EAD.

For principal aliens applying for U nonimmigrant status from outside the United States, this rule provides that the initial EAD will not be produced until the alien has been admitted to the United States in U–1 nonimmigrant status. *Id.* To receive an EAD, the alien must make a request to USCIS for an EAD accompanied by a copy of his or her Form I–94, ''Arrival-Departure Record,'' proving the alien's admission to the United States in U–1 nonimmigrant status. *Id.* No forms or filing fees are required. *Id.* Form I–94 should be submitted to the office having jurisdiction over petitions for U nonimmigrant status as indicated on the instructions to Form I–918.

Derivative family members seeking an EAD must make their EAD request on a form separate from Form I–918, Supplement A requesting U nonimmigrant status. To request an EAD, derivative family members must file Form I–765, ''Application for Employment Authorization,'' with the appropriate filing fee (or a request for a fee waiver) stated in the instructions to the form. New 8 CFR 214.14(f)(7); revised 8 CFR 274a.13(a). USCIS could not design Form I–918, Supplement A to serve as a dual purpose form for derivative family members because the form is filed by the principal alien on behalf of, rather than directly by, derivative family members.

For derivative family members who are within the United States, Form I–

765 may be filed concurrently with Form I–918, Supplement A, or it may be filed at a later time. New 8 CFR 214.14(f)(7). For derivative family members who are outside the United States, Form I–765 must be filed with the office having jurisdiction over petitions for U nonimmigrant status, as specified in the instructions to the Form I–765, after their admission to the United States in U nonimmigrant status. *Id.* They should include a copy of their approval notice for U nonimmigrant classification, a copy of their passport, and a copy of their Form I–94. This supporting documentation is necessary to verify identity and confirm the alien's physical presence in the United States and U nonimmigrant status.

Whether automatically generated or generated based on Form I–765, USCIS will issue the initial EAD on Forms I–766 or I–688B, valid for no longer than the approved period of stay in U nonimmigrant status. U nonimmigrants whose EADs will expire earlier may request a renewal EAD. Renewal requests must be made on Form I–765 in accordance with form instructions and with the appropriate fee or request for a fee waiver.

This rule also makes conforming amendments to 8 CFR parts 274a.12 and 274a.13. New 8 CFR 274a.12(a)(19) provides that principal nonimmigrants in U–1 status are employment authorized incident to status and do not need to apply to USCIS for a document evidencing this employment authorization. New 8 CFR 274a.12(a)(20) and revised 8 CFR 274a.13(a) provide that derivative family members in U–2, U–3, U–4, and U–5 nonimmigrant status are employment authorized incident to status, but must apply to USCIS for employment authorization documentation.

This rule also makes technical corrections to 8 CFR parts 274a.12 and 274a.13(a) to eliminate certain errors. The corrections clarify: (1) That asylees described in 8 CFR 274a.12(a)(5) and T nonimmigrants described in 8 CFR 274a.12(a)(16) do not need to apply to USCIS in order to receive a document evidencing their employment authorization incident to status; and (2) that aliens granted Family Unity benefits under the LIFE Act described in 8 CFR 274a.12(a)(14) and V nonimmigrants described in 8 CFR 274a.12(a)(15) must apply to USCIS in order to receive a document evidencing such employment authorization. This rule also reserves 8 CFR 274a.12(a)(17) and (18) for future use.

6. Travel Outside the United States

Aliens with U nonimmigrant status may travel outside the United States. However, in order to return to the United States, such aliens must obtain a U nonimmigrant visa for re-entry to the United States unless they are visa exempt. 8 CFR 212.1. They also should keep in mind that if they accrued more than 180 days of ''unlawful presence'' prior to obtaining U nonimmigrant status, they may be found inadmissible upon their return to the United States. *See* INA sec. 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B). Any alien other than a lawful permanent resident who was unlawfully present in the United States between 180 days and one year and departs the United States is barred from readmission to the United States for three years from the date of departure. INA sec. 212(a)(9)(B)(i)(I), 8 U.S.C. 1182(a)(9)(B)(i)(I). If the alien was unlawfully present for more than one year, he or she is barred from seeking readmission for a period of 10 years from the date of departure. INA sec. 212(a)(9)(B)(i)(II), 8 U.S.C. 1182(a)(9)(B)(i)(II). An alien is deemed to be unlawfully present in the United States if he or she remains in the United States after the expiration of an authorized period of stay or is present in the United States without being admitted or paroled. INA sec. 212(a)(9)(B)(ii), 8 U.S.C. 1182(a)(9)(B)(ii). U nonimmigrant aliens subject to the unlawful presence ground of inadmissibility may request a waiver of inadmissibility on Form I–192, as discussed earlier in this Supplementary Information, prior to or upon their return to the United States.

For nonimmigrants seeking admission to the United States, a valid, unexpired passport is required in addition to a valid visa, unless an exemption applies. *See* INA sec. 212(a)(7)(B), 8 U.S.C. 1182(a)(7)(B); 8 CFR 212.1. In unforeseen emergency situations, these requirements may be waived for certain categories of nonimmigrants. INA sec. 212(d)(4)(A), 8 U.S.C. 1182(d)(4)(A); 8 CFR 212.1(g). This rule extends eligibility to apply for this waiver to U nonimmigrants and petitioners for U nonimmigrant status. USCIS believes that such an extension is necessary because U nonimmigrants or petitioners for U nonimmigrant status, as crime victims, may be faced with threats to their lives or safety which may make them unable to timely obtain a visa or passport.

Accordingly, this rule amends 8 CFR 212.1(g) to add U–1, U–2, U–3, U–4, and U–5 nonimmigrants and those seeking such status to the list of nonimmigrants who may seek a waiver of the visa and passport requirements for unforeseen emergencies. *See* revised 8 CFR 212.1(g). This waiver may apply to a U nonimmigrant who needs to travel outside the United States but, due to an unforeseen emergency, is unable to obtain a passport from his or her country of citizenship or nationality or a visa from a U.S. Embassy or Consulate in order to re-enter the United States. This waiver also may apply to a petitioner for U nonimmigrant status who is outside the United States, but who needs to enter the United States due to an unforeseen emergency after Form I–918 is adjudicated but before he or she has received a visa from a U.S. embassy or consular office or obtained a passport from his or her country of citizenship or nationality. For example, USCIS anticipates that this waiver could be needed where government officials from the alien victim's home country are implicated in the criminal activity, and, as a result, the petitioner is unable to obtain a passport or safely travel to the U.S. Embassy or Consulate to obtain a visa. A waiver may also be needed where the perpetrator is not in custody, has made threats against the petitioner, and the petitioner needs to enter the United States immediately to ensure his or her safety.

As under the current regulatory provision, this rule maintains that all eligible nonimmigrants must request a waiver on Form I–193, ''Application for Waiver of Passport and/or Visa.'' Revised 8 CFR 212.1(g). New 8 CFR 212.1(p) authorizes the director of the office having jurisdiction over the adjudication of Form I–918 to adjudicate the waiver application.

This rule makes a technical correction to current 8 CFR 212.1(g) by deleting the reference to ''Deputy Commissioner.'' This position no longer exists after DHS took over the functions of the former Immigration and Naturalization Service in March of 2003. See 6 U.S.C. 291(a).

7. Revocation of U Nonimmigrant Status

This rule establishes USCIS's authority to revoke its approval of Form I–918 and Form I–918, Supplement A, and any waivers of inadmissibility that were granted in conjunction with the petition. New 8 CFR 214.14(h). Revocation authority flows from section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1). This provision authorizes the Secretary of Homeland Security to prescribe, by regulation, the time and conditions of admission of any nonimmigrant. Implicit in this authority is the authority to prescribe the conditions under which nonimmigrant status may be revoked. Revocation of an approved U

nonimmigrant status petition necessarily results in the termination of U nonimmigrant status. New 8 CFR 214.14(h)(4).

The rule establishes two forms of revocation: Automatic and by notice. Automatic revocation applies where a principal alien with an approved U nonimmigrant petition who applied from outside the United States notifies USCIS that he or she will not use the approved petition to enter the United States. New 8 CFR 214.14(h)(1).

Revocation by notice is at the discretion of USCIS. *See* new 8 CFR 214.14(h)(2). This rule establishes the following bases for revocations by notice: (1) Where the certifying official withdraws the U nonimmigrant status certification upon which the principal U nonimmigrant's petition was based or disavows the contents of the certification in writing; (2) where approval of the petition was in error; (3) where there was fraud in the petition; (4) where a derivative's relationship to the principal has terminated; and (5) where the principal's approved petition for U–1 nonimmigrant status is revoked. *Id.* USCIS has determined that revocation of a petition by notice in cases where the certification is withdrawn is appropriate because when that occurs, the principal no longer meets the requirements for U nonimmigrant status as described by section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U), and therefore, is no longer maintaining status. A nonimmigrant who fails to maintain nonimmigrant status is removable from the United States under section 237(a)(1)(C)(i) of the INA, 8 U.S.C. 1227(a)(1)(C)(i). USCIS has determined that revocation of a petition by notice in cases of fraud or error is appropriate because both bases indicate that the petitioner may have obtained a benefit for which he or she was not eligible. USCIS has also determined that revocation of a derivative petition where the relationship to the principal has terminated or where the principal's U–1 nonimmigrant status has been revoked is appropriate because, as a general matter, a derivative's status is dependent upon the principal's status. This rule classifies these bases for revocation as discretionary rather than automatic because USCIS recognizes that there may be instances in which revocation of the derivative petition is not warranted. For example, revocation of the derivative petition may not be warranted where the derivative is providing valuable assistance to the certifying agency in the investigation or prosecution of criminal activity. Providing such assistance is an eligibility requirement for U nonimmigrants, including derivatives, seeking to adjust status to that of a lawful permanent resident. *See* INA sec. 245(m), 8 U.S.C. 1255(m).

At new 8 CFR 214.14(h)(2)(ii), this rule provides that the notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation. This provision also states that the alien may submit evidence in rebuttal within 30 days of the date of the notice, which is the standard amount of time given for rebutting a notice of intent to revoke. *See, e.g.*, 8 CFR 214.2(h)(11)(iii)(B); 8 CFR 214.11(s)(2). The rule mandates that USCIS must consider all relevant evidence presented in deciding whether to revoke the approval of the petition. The rule provides that just as with the initial adjudication of Form I–918, the determination of what is relevant evidence and the weight to be given to that evidence will be within the sole discretion of USCIS. If USCIS revokes approval of a petition and thereby terminates U nonimmigrant status, USCIS will provide the alien with a written notice of revocation that explains the specific reasons for the revocation. New 8 CFR 214.14(h)(2)(ii).

For revocations by notice, this rule permits appeals to USCIS's AAO. New 8 CFR 214.14(h)(3). The rule requires appeals to be submitted within 30 days of the date of the notice of revocation. USCIS believes this is a reasonable amount of time for the petitioner to appeal the decision and is in keeping with the desire to promote administrative efficiency and finality in adjudications. In addition, a timeframe of 30 days to file an appeal is a standard period for filing an appeal. *See, e.g.*, 8 CFR 103.3(a)(2)(i); 8 CFR 214.2(h)(12)(ii). Appeals are not permitted for automatic revocations. New 8 CFR 214.14(h)(3). Once the certifying agency has withdrawn the certification, the alien ceases to be statutorily eligible for U nonimmigrant status, and there is no basis for an appeal.

Once USCIS revokes a principal alien's approved petition for U nonimmigrant status, USCIS will also deny any pending U nonimmigrant petitions for qualifying family members. New 8 CFR 214.14(h)(4). Without an approved petition for U nonimmigrant status for the principal, there is no statutory basis for granting U–2, U–3, U–4, or U–5 derivative status.

This rule provides that revocation of a previously approved petition will have no effect on the annual cap. New 8 CFR 214.14(h)(4). Therefore, once a U nonimmigrant status is granted to a principal alien, the number will be deemed to have been used and cannot be used again. In developing this rule, USCIS considered providing for re-use of the number. However, USCIS determined that not only would it be infeasible to track such numbers, USCIS does not believe it has the statutory authority to recapture the numbers after the end of each fiscal year.

8. Removal Proceedings

This rule provides for another means for terminating U nonimmigrant status. New 8 CFR 214.14(i) states that USCIS may exercise its existing authority to institute removal proceedings under section 239 of the INA, 8 U.S.C. 1229, for conduct committed after admission, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts in the Form I–918, Form I–918, Supplement A, or supporting documentation, or after revocation of U nonimmigrant status. Each of these circumstances may give rise to a ground of removability under section 237(a) of the INA, 8 U.S.C. 1227(a).

D. Filing and Biometric Services Fees

USCIS has determined that no fee will be charged for filing Form I–918 or for derivative U nonimmigrant status for qualifying family members. See 72 FR 29851, at 29865. Petitioners must, however, submit the established fee for biometric services for each person ages 14 through 79 inclusive with each U nonimmigrant status petition. New 8 CFR 214.14(c)(2)(iv). USCIS recognizes that many petitioners for U nonimmigrant status may be unable to pay the biometric services fee. Petitioners who are financially unable to pay the biometric services fee may submit an application for a fee waiver, as outlined in 8 CFR 103.7(c). The granting of a fee waiver will be at the sole discretion of USCIS. See 72 FR 29851, at 29865. Further guidance on fee waivers can be found on USCIS's Web site at *http://www.uscis.gov/graphics/formsfee/forms/index.htm.*

This program involves the personal well-being of a few applicants and petitioners, and the decision to waive the petition fee reflects the humanitarian purposes of the authorizing statutes. This blanket fee exemption is because it is consistent with the legislative intent to assist persons in these circumstances. Also, anecdotal evidence indicates that applicants under these programs are generally deserving of a fee waiver. Thus, USCIS determined that these programs would likely result in such a

high number of waiver requests that adjudication of those requests would overtake the adjudication of the benefit requests themselves.

IV. Regulatory Requirements

A. Administrative Procedure Act

USCIS has determined that delaying this rule to allow public comment would be impracticable and contrary to the public interest; thus, this rule is being published as an interim final rule and is effective 30 days after publication. Nonetheless, USCIS invites comments and will address comments in the final rule.

USCIS finds a compelling public need for rapid implementation of this rule justifying the exception allowed by the Administrative Procedure Act (APA) to the requirements for soliciting public comment before a rule shall take effect. 5 U.S.C. 553(b)(3)(B). This exception should be used by agencies in cases, such as this, where delay could result in serious harm. See, *Jifry* v. *Fed. Aviation Admin.,* 370 F.3d 1174 (D.C. Cir. 2004) (finding the exception excuses notice and comment where delay could result in serious harm). Congress created the new U classification to curtail criminal activity, protect victims of crimes committed against them in the United States, and encourage victims to fully participate in the investigation of the crimes and the prosecution of the perpetrators. See BIWPA sec. 1513(a)(2). Many immigrant crime victims fear coming forward to assist law enforcement until this rule is effective. Thus, continued delay of this rule further exposes victims of these crimes to danger, and leaves their legal status in an indeterminate state. Moreover, the delay prevents law enforcement agencies from receiving the benefits of the BIWPA and continues to expose the U.S. to security risks and other effects of human trafficking. Therefore, delay in the implementation of these regulations would be contrary to the public interest.

Further, USCIS finds that the good cause exception is warranted by the statutorily imposed deadline and the complicated nature of this rule. Agencies may bypass public comment when a statutorily imposed deadline is combined with a complicated statutory or regulatory scheme and there is either evidence that the agency has been diligent in its efforts to comply with the statutory deadline or a compelling need for rapid implementation of the regulation. *See Methodist Hosp. of Sacramento* v. *Shalala,* 38 F.3d 1225 (D.C. Cir. 1994) (5 month statutory deadline and complex regulatory framework constituted good cause for exception); *Petry* v. *Block,* 737 F.2d 1193, 1201 (D.C. Cir. 1984) (agency's good cause argument was justifiable ''in light of extremely limited timeframe given by Congress in relation to amount of work required to produce rule.''). Section 828 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162, January 5, 2006) requires DHS to publish regulations required by that Act within 180 days after enactment (i.e., July 4, 2006). Unfortunately, the statutory and regulatory framework of U.S. immigration laws is exceedingly complex. *See Zadvydas* v. *Davis,* 533 U.S. 678 (2001). Plus, these regulations have required input and coordination with law enforcement agencies affected by this rule to balance its humanitarian goals and law enforcement interests.

Accordingly, DHS finds that good cause exists under 5 U.S.C. 553(b) to make this interim rule effective 30 days following publication in the **Federal Register**, before closure of the 60-day public comment period. DHS nevertheless invites written comments on this interim rule, and will consider any timely comments in preparing a final rule.

DHS notes that in compliance with the Paperwork Reduction Act, USCIS published notices in the **Federal Register** requesting public comment on Form I–918, ''Petition for U Nonimmigrant Status,'' Supplement A, ''Petition for Qualifying Family Member of U–1 Recipient,'' and Supplement B, ''U Nonimmigrant Status Certification.'' *See* 70 FR 72460 (Dec. 5, 2005) (60-day notice); 71 FR 32117 (June 2, 2006) (30-day notice). The instructions to these forms include descriptions of the eligibility and evidentiary requirements for obtaining U nonimmigrant status. USCIS received 55 comments in response to the 60-day notice. The comments addressed the comprehension, readability, and burden estimate of the form, as well as the substance of the form instructions. The substantive comments primarily focused on seven general areas: (1) Changes required by intervening legislation; (2) the certification process; (3) instructions for interim relief recipients; (4) filing deadlines; (5) fees; (6) the admissibility requirement; and (7) the evidence standard. In response to these comments, USCIS revised the forms for the 30-day notice and incorporated the comments, as appropriate, into this interim rule. USCIS received no comments in response to the 30-day notice.

To review the forms, a summary of the public comments, and USCIS' response to the comments, contact the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, *rfs.regs@dhs.gov* (e-mail).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBRFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). USCIS has determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Further, this regulation directly regulates individuals, not small entities as that term is defined under the RFA. Therefore, an RFA analysis is not required for this rule.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866 (Regulatory Planning and Review)

This rule is considered by USCIS to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

This rule establishes the requirements and procedures for aliens seeking nonimmigrant status under the U classification. The U nonimmigrant classification is available to alien victims of certain criminal activity who assist government officials in investigating or prosecuting that criminal activity, and provides temporary immigration benefits (nonimmigrant status and employment authorization), potentially leading to permanent resident status. This rule requires and establishes an application process for U nonimmigrant status and employment authorization, designating Form I–918 as the form that petitioners must use to request U nonimmigrant status. This rule also imposes petition requirements and processing fees.

1. Costs to Petitioners

USCIS estimates the total annual cost of this interim rule to be $6,182,000. This cost includes the biometric services fee that the petitioner must pay to USCIS, the opportunity cost of time needed to submit the required forms, the opportunity cost of time required for a visit to an Application Support Center, and the cost of traveling to an Application Support Center. Below, these costs are described in more detail.

This rule requires any individual seeking U nonimmigrant status to pay the prescribed biometric services fee. This fee is currently $80 per person. *See* 72 FR 29851.

USCIS estimates that it will receive 12,000 Forms I–918 and 24,000 Forms I–918, Supplement A each fiscal year. Therefore, USCIS estimates that this rule will cost petitioners $960,000 (12,000 × $80 biometric services charge) in fees for Forms I–918, and $1,920,000 (24,000 × $80 biometric services charge) in fees for Forms I–918, Supplement A. The total cost of this rule to petitioners will be $2,880,000 in biometric services fees each fiscal year.

Additionally, USCIS estimates that each Form I–918 petitioner will spend 5 hours complying with this rule. USCIS estimates that each petitioner will spend 75 minutes reading the Form I–918 instructions. It will take 75 minutes to complete the form and 150 minutes to assemble and submit the form, for a total of 300 minutes of each petitioner's time. USCIS estimates that petitioners also submitting Form I–918, Supplement A will spend 1 hour and 30 minutes complying with this rule. USCIS estimates that each petitioner will spend 30 minutes reading the instructions to Form I–918, Supplement A, 30 minutes to complete the form, and 30 minutes to assemble and submit the form.

Petitioners and qualifying family members will also be required to travel to the nearest USCIS Application Support Center (ASC) to provide biometrics information. While travel times and distances will vary, USCIS estimates the average round-trip to an ASC will be 20 miles, and that the average time for that trip will be an hour. It will take an average of one hour for a petitioner or qualifying family member to wait for service, and to have his or her biometrics collected. Total time for each individual to comply with this requirement is two hours.

As previously discussed, USCIS expects to receive a total of 36,000 forms (12,000 Forms I–918 and 24,000 Forms I–918, Supplement A) annually. However, USCIS does not know how many of these forms will be filed by adults on behalf of children. Consequently, it is difficult for USCIS to estimate the opportunity cost of time for the 36,000 petitioners and qualifying family members with precision. For the purpose of this economic analysis, USCIS will assume that all petitioners and qualifying family members are adults and use an opportunity cost of time based on national wage rates. Specifically, USCIS is using the mean national hourly wage rate from the Bureau of Labor Statistics (BLS) for 2003 as a proxy for the opportunity cost of an individual's time. BLS estimates for ''All Occupations'' the mean hourly wage was $17.75 in 2003. Using this BLS wage data, USCIS estimates the total cost for petitioner time spent is $1,491,000 (12,000 persons × 7.0 hours × $17.75) for Form I–918 petitioners, and $1,491,000 (24,000 persons × 3.5 hours × $17.75) for Form I–918, Supplement A petitioners and qualifying family members.

Additionally, there is the cost of travel. USCIS anticipates that most petitioners will drive privately-owned vehicles to the ASCs. The General Services Administration (GSA) establishes a reimbursement rate that is used when privately owned vehicles are used by federal employees while on official travel. We consider this GSA reimbursement rate to be a reasonable proxy for the cost of driving to an ASC. This reimbursement rate fluctuates over time; however, as of January 1, 2006, GSA calculates the cost of operating a privately-owned vehicle as 44.5 cents a mile. Therefore, USCIS calculates the transportation costs as $320,400 (36,000 persons × 44.5 cents per mile × 20 miles).

In summary, USCIS estimates the total cost of the program would be $2,880,000 in biometric services fees, $2,982,000 million in time and $320,400 in transportation costs. The total cost of compliance to this rule each fiscal year by 36,000 persons is $6,182,000 ($2,880,000 + $2,982,000 million + $320,400).

2. Treatment of Petitions That Exceed the Statutory Cap

The number of petitions for U–1 nonimmigrant status that USCIS may grant is limited to 10,000 in any fiscal year (October 1 through September 30). INA sec. 214(p)(2), 8 U.S.C. 1184(p)(2). USCIS anticipates receiving 12,000 petitions each fiscal year. Therefore, the potential exists that the number of approvable petitions per fiscal year will exceed the numerical limit (i.e., cap). USCIS has identified the following four alternatives, the first being chosen for this rule:

1. USCIS would adjudicate petitions on a first in, first out basis. Petitions received after the limit has been reached would be reviewed to determine whether or not they are approvable but for the numerical cap. Approvable petitions that are reviewed after the numerical cap has been reached would be placed on a waiting list and written notice would be sent to the petitioner. Priority on the waiting list would be based upon the date on which the petition is filed. USCIS would provide petitioners on the waiting list with interim relief until the start of the next fiscal year in the form of deferred action, parole, or a stay of removal. At the beginning of the next fiscal year, petitions on the waiting list would be granted first. Advantages to this alternative include: assisting law enforcement agencies by allowing the alien victim to remain in the United States to assist in the investigation or prosecution of criminal activity while waiting for new numbers to become available; improving customer service by allowing victims to remain in the United States, giving them an opportunity to access victims services to which they may be entitled; and providing employment authorization to alien victims so they will have a lawful means through which to support themselves and their families. Disadvantages include additional administrative and case management costs to USCIS due to the need to maintain a waiting list during the fiscal year and to adjudicate interim relief. In addition, those applying for U nonimmigrant status from outside the United States may be disadvantaged because they will not be able to enter the United States while waiting for a new number to become available.

2. USCIS would adjudicate petitions on a first in, first out basis, establishing

a waiting list for petitions that are pending or received after the numerical cap has been reached. Priority on the waiting list would be based upon the date on which the petition was filed. USCIS would not provide interim relief to petitioners whose petitions are placed on the waiting list. This means that petitioners who are not in status would be accruing unlawful presence and would be removable. At the beginning of the next fiscal year, petitions on the waiting list would be adjudicated first. The primary advantage of this alternative is that it eliminates the need for petitioners to file a new petition each year and keeps petitions in process. Disadvantages of this alternative include: little assurance that the alien victim will not be removed from the United States; law enforcement has no assurance that the alien victim will be present in the United States to assist in the investigation or prosecution of criminal activity; without permission to remain in the U.S., the alien victim may be deprived of victims services to which they may be entitled. This approach would also result in additional administrative and case management costs by creating the need to maintain a waiting list during the fiscal year and could create a perpetual waiting list/backlog.

3. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be reviewed to identify particularly compelling cases for adjudication. New filings would be rejected once the numerical cap is reached. No official waiting list would be established; however, interim relief until the start of the next fiscal year would be provided for some compelling cases. If a case was not particularly compelling, the filing would be denied or rejected. The advantage to this approach is that it would provide a mechanism to ensure that certain alien victims needed for the investigation or prosecution of criminal activity would be able to remain in the United States. Disadvantages include: difficulty in establishing balanced standards regarding who will receive interim relief; depriving alien victims not given interim relief of victims' services to which they may be entitled; and depriving law enforcement of assistance of victims not given interim relief. An additional disadvantage would be that petitioners would have to pay the filing fee in order for USCIS to review the petition to determine whether it was particularly compelling and merited interim relief. A large percentage of the petitions would likely be denied or rejected which would result in financial losses to the petitioners.

4. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be rejected once the numerical cap is reached. No waiting list would be established, nor would interim relief be granted. Advantages to this approach include no additional administrative or case management costs since it would allow rejection once the cap is reached, and equal treatment for those applying from outside the United States. Disadvantages include: depriving law enforcement of cooperating alien victims for those whose petitions are rejected; depriving rejected petitioners access to victims services to which they may be entitled; disadvantaging those who are unable to file early in the fiscal year; and potentially impeding case processing efficiency by causing adjudication to occur in waves (i.e., busy during the beginning of the fiscal year and then slow once the cap is reached).

USCIS chose the first alternative for this rule because USCIS believes that it best meets the goals of the BIWPA by both ensuring the protection of alien victims and minimizing the risk of disruptions to criminal investigations and prosecutions.

USCIS solicits comments on these alternatives, as well as other proposals for managing the numerical limitation on grants of U nonimmigrant status.

F. Executive Order 13132 (Federalism)

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Family Assessment

I have reviewed this regulation and have determined that it may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A. Accordingly, I have assessed this action in accordance with the criteria specified by section 654(c)(1). This regulation will enhance family well-being by encouraging vulnerable individuals who have been victims of certain criminal activity, or in some cases, whose family members have been victims of certain criminal activity, to report the criminal activity, and by providing critical assistance and benefits. Additionally, this regulation allows qualifying family members to obtain U nonimmigrant status once the principal petitioner has received status.

I. Paperwork Reduction Act

This rule establishes application requirements and procedures for aliens to receive U nonimmigrant status, defined in section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U). Some of the information collection requirements contained in this rule have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display Control Numbers, and are noted herein. Form I–192, ''Application for Advance Permission to Enter as Nonimmigrant,'' OMB Control Number 1615–0017; Form I–193, ''Application for Waiver of Passport and/or Visa,'' OMB Control Number 1653–0004; Form I–539, ''Application to Extend/Change Nonimmigrant Status,'' OMB Control Number 1615–0003; Form I–765, ''Application for Employment Authorization,'' OMB Control Number 1615–0040.

In addition, this rule requires that an alien submit a completed Form I–918, ''Petition for U Nonimmigrant Status,'' and supporting documentation to apply for U nonimmigrant status. This Form I–918 and supporting documentation is considered a new information collection under the Paperwork Reduction Act. OMB has approved this new information collection in accordance with the Paperwork Reduction Act of 1995 and assigned it OMB Control Number 1615–0104.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students, victims.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2335 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.7(b)(1) is amended by adding, in proper alpha/numeric sequence, a new ''Form I–918'' and ''Form I–918, Supplement A'' to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–918. For filing a petition to classify an alien as a nonimmigrant under section 101(a)(15)(U)(i) of the Act, 8 U.S.C. 1101(a)(15)(U)(i)—$270. For filing a petition to classify an alien as a nonimmigrant under section 101(a)(15)(U)(ii) of the Act, 8 U.S.C. 1101(a)(15)(U)(ii), on Form I–918, Supplement A concurrently with Form I–918—$120 per family member, up to a maximum amount of $540.

Form I–918, Supplement A. For filing a petition to classify an alien as a nonimmigrant under section 101(a)(15)(U)(ii) separately from Form I–918—$120.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSABLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227.

■ 4. Section 212.1 is amended by revising paragraph (g) and adding a new paragraph (p) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(g) *Unforeseen emergency.* A nonimmigrant seeking admission to the United States must present an unexpired visa and passport valid for the amount of time set forth in section 212(a)(7)(B) of the Act, 8 U.S.C. 1182(a)(7), or a valid biometric border crossing card, issued by the DOS on Form DSP–150, at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of the paragraphs (a) through (f) or (i), (o), or (p) of this section. Upon a nonimmigrant's application on Form I–193, ''Application for Waiver of Passport and/or Visa,'' a district director may, in the exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements, if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

* * * * *

(p) *Alien in U–1 through U–5 classification.* Individuals seeking U–1 through U–5 nonimmigrant status may avail themselves of the provisions of paragraph (g) of this section, except that the authority to waive documentary requirements resides with the director of the USCIS office having jurisdiction over the adjudication of Form I–918, ''Petition for U Nonimmigrant Status.''

■ 5. Section 212.17 is added, to read as follows:

§ 212.17 Applications for the exercise of discretion relating to U nonimmigrant status.

(a) *Filing the waiver application.* An alien applying for a waiver of inadmissibility under section 212(d)(3)(B) or (d)(14) of the Act (waivers of inadmissibility), 8 U.S.C. 1182(d)(3)(B) or (d)(14), in connection with a petition for U nonimmigrant status being filed pursuant to 8 CFR 214.14, must submit Form I–192, ''Application for Advance Permission to Enter as Non-Immigrant,'' in accordance with the form instructions, along with Form I–918, ''Petition for U Nonimmigrant Status,'' or Form I–918, Supplement A, ''Petition for Qualifying Family Member of U–1 Recipient.'' An alien in U nonimmigrant status who is seeking a waiver of section 212(a)(9)(B) of the Act, 8 U.S.C. 1182(a)(9)(B) (unlawful presence ground of inadmissibility triggered by departure from the United States), must file Form I–192 prior to his or her application for re-entry to the United States in accordance with the form instructions.

(b) *Treatment of waiver application.* (1) USCIS, in its discretion, may grant Form I–192 based on section 212(d)(14) of the Act, 8 U.S.C. 1182(d)(14), if it determines that it is in the public or national interest to exercise discretion to waive the applicable ground(s) of inadmissibility. USCIS may not waive a ground of inadmissibility based upon section 212(a)(3)(E) of the Act, 8 U.S.C. 1182(a)(3)(E). USCIS, in its discretion, may grant Form I–192 based on section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), except where the ground of inadmissibility arises under sections 212(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), or (3)(E) of the Act, 8 U.S.C. 1182(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), or (3)(E).

(2) In the case of applicants inadmissible on criminal or related grounds, in exercising its discretion USCIS will consider the number and severity of the offenses of which the applicant has been convicted. In cases involving violent or dangerous crimes or inadmissibility based on the security and related grounds in section 212(a)(3) of the Act, USCIS will only exercise favorable discretion in extraordinary circumstances.

(3) There is no appeal of a decision to deny a waiver. However, nothing in this paragraph is intended to prevent an applicant from re-filing a request for a waiver of ground of inadmissibility in appropriate cases.

(c) *Revocation.* The Secretary of Homeland Security, at any time, may revoke a waiver previously authorized under section 212(d) of the Act, 8 U.S.C. 118(d). Under no circumstances will the alien or any party acting on his or her behalf have a right to appeal from a decision to revoke a waiver.

PART 214—NONIMMIGRANT CLASSES

■ 6. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–

1305 and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

■ 7. Section 214.1 is amended by:
■ a. Adding a new paragraph (a)(1)(ix); and by
■ b. Adding classification designations in proper numeric/alphabetical sequence in the table in paragraph (a)(2).

The additions read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(1) * * *

(ix) Section 101(a)(15)(U)(ii) is divided into (U)(ii), (U)(iii), (U)(iv), and (U)(v) for the spouse, child, parent, and siblings, respectively, of a nonimmigrant classified under section 101(a)(15)(U)(i); and

(2) * * *

Section	Designation
101(a)(15)(U)(i)	U–1.
101(a)(15)(U)(ii)	U–2, U–3, U–4, U–5.

* * * * *

■ 8. A new § 214.14 is added to read as follows:

§ 214.14 Alien victims of certain qualifying criminal activity.

(a) *Definitions.* As used in this section, the term:

(1) *BIWPA* means Battered Immigrant Women Protection Act of 2000 of the Victims of Trafficking and Violence Protection Act of 2000, div. B, Violence Against Women Act of 2000, tit. V, Pub. L. 106–386, 114 Stat. 1464, (2000), *amended by* Violence Against Women and Department of Justice Reauthorization Act of 2005, tit. VIII, Pub. L. 109–162, 119 Stat. 2960 (2006), *amended by* Violence Against Women and Department of Justice Reauthorization Act—Technical Corrections, Pub. L. 109–271, 120 Stat. 750 (2006).

(2) *Certifying agency* means a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity. This definition includes agencies that have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.

(3) *Certifying official* means:

(i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; or

(ii) A Federal, State, or local judge.

(4) *Indian Country* is defined as:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(5) *Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

(6) *Military Installation* means any facility, base, camp, post, encampment, station, yard, center, port, aircraft, vehicle, or vessel under the jurisdiction of the Department of Defense, including any leased facility, or any other location under military control.

(7) *Next friend* means a person who appears in a lawsuit to act for the benefit of an alien under the age of 16 or incapacitated or incompetent, who has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity. The next friend is not a party to the legal proceeding and is not appointed as a guardian.

(8) *Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim.

(9) *Qualifying crime or qualifying criminal activity* includes one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. The term ''any similar activity'' refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

(10) *Qualifying family member* means, in the case of an alien victim 21 years of age or older who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U), the spouse or child(ren) of such alien; and, in the case of an alien victim under the age of 21 who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, *qualifying family member* means the spouse, child(ren), parents, or unmarried siblings under the age of 18 of such an alien.

(11) *Territories and Possessions of the United States* means American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

(12) *U nonimmigrant status certification* means Form I–918, Supplement B, ''U Nonimmigrant Status Certification,'' which confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

(13) *U interim relief* refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations.

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, USCIS will consider the age

of the victim at the time the qualifying criminal activity occurred.

(ii) A petitioner may be considered a victim of witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy to commit one or more of those offenses, if:

(A) The petitioner has been directly and proximately harmed by the perpetrator of the witness tampering, obstruction of justice, or perjury; and

(B) There are reasonable grounds to conclude that the perpetrator committed the witness tampering, obstruction of justice, or perjury offense, at least in principal part, as a means:

(*1*) To avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity; or

(*2*) To further the perpetrator's abuse or exploitation of or undue control over the petitioner through manipulation of the legal system.

(iii) A person who is culpable for the qualifying criminal activity being investigated or prosecuted is excluded from being recognized as a victim of qualifying criminal activity.

(b) *Eligibility.* An alien is eligible for U–1 nonimmigrant status if he or she demonstrates all of the following in accordance with paragraph (c) of this section:

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. Whether abuse is substantial is based on a number of factors, including but not limited to: The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions. No single factor is a prerequisite to establish that the abuse suffered was substantial. Also, the existence of one or more of the factors automatically does not create a presumption that the abuse suffered was substantial. A series of acts taken together may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may provide the required assistance. In addition, if the petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance; and

(4) The qualifying criminal activity occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violated a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court.

(c) *Application procedures for U nonimmigrant status*—(1) *Filing a petition.* USCIS has sole jurisdiction over all petitions for U nonimmigrant status. An alien seeking U–1 nonimmigrant status must submit, by mail, Form I–918, ''Petition for U Nonimmigrant Status,'' applicable fees (or request for a fee waiver as provided in 8 CFR 103.7(c)), and initial evidence to USCIS in accordance with this paragraph and the instructions to Form I–918. A petitioner who received interim relief is not required to submit initial evidence with Form I–918 if he or she wishes to rely on the law enforcement certification and other evidence that was submitted with the request for interim relief.

(i) *Petitioners in pending immigration proceedings.* An alien who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who would like to apply for U nonimmigrant status must file a Form I–918 directly with USCIS. U.S. Immigration and Customs Enforcement (ICE) counsel may agree, as a matter of discretion, to file, at the request of the alien petitioner, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while a petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) *Petitioners with final orders of removal, deportation, or exclusion.* An alien who is the subject of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U–1 nonimmigrant status directly with USCIS. The filing of a petition for U–1 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the petitioner's removal.

(2) *Initial evidence.* Form I–918 must include the following initial evidence:

(i) Form I–918, Supplement B, ''U Nonimmigrant Status Certification,'' signed by a certifying official within the six months immediately preceding the filing of Form I–918. The certification must state that: the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge; the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity; the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting; the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim; the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity; and the qualifying criminal activity violated

U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.

(ii) Any additional evidence that the petitioner wants USCIS to consider to establish that: the petitioner is a victim of qualifying criminal activity; the petitioner has suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) possesses information establishing that he or she has knowledge of the details concerning the qualifying criminal activity of which he or she was a victim and upon which his or her application is based; the petitioner (or, in the case of a child under the age of 16 or petitioner who is incompetent or incapacitated, a parent, guardian or next friend of the petitioner) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge, investigating or prosecuting the criminal activity of which the petitioner is a victim; or the criminal activity is qualifying and occurred in the United States (including Indian country and U.S. military installations) or in the territories or possessions of the United States, or violates a U.S. federal law that provides for extraterritorial jurisdiction to prosecute the offense in a U.S. federal court;

(iii) A signed statement by the petitioner describing the facts of the victimization. The statement also may include information supporting any of the eligibility requirements set out in paragraph (b) of this section. When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on behalf of the petitioner; and

(iv) If the petitioner is inadmissible, Form I–192, ''Application for Advance Permission to Enter as Non-Immigrant,'' in accordance with 8 CFR 212.17.

(3) *Biometric capture.* All petitioners for U–1 nonimmigrant status must submit to biometric capture and pay a biometric capture fee. USCIS will notify the petitioner of the proper time and location to appear for biometric capture after the petitioner files Form I–918.

(4) *Evidentiary standards and burden of proof.* The burden shall be on the petitioner to demonstrate eligibility for U–1 nonimmigrant status. The petitioner may submit any credible evidence relating to his or her Form I–918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I–918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a petitioner for U–1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I–918, Supplement B, ''U Nonimmigrant Status Certification.''

(5) *Decision.* After completing its de novo review of the petition and evidence, USCIS will issue a written decision approving or denying Form I–918 and notify the petitioner of this decision. USCIS will include in a decision approving Form I–918 a list of nongovernmental organizations to which the petitioner can refer regarding his or her options while in the United States and available resources.

(i) *Approval of Form I–918, generally.* If USCIS determines that the petitioner has met the requirements for U–1 nonimmigrant status, USCIS will approve Form I–918. For a petitioner who is within the United States, USCIS also will concurrently grant U–1 nonimmigrant status, subject to the annual limitation as provided in paragraph (d) of this section. For a petitioner who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I–918. A petitioner who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(A) *Notice of Approval of Form I–918 for U–1 petitioners within the United States.* After USCIS approves Form I–918 for an alien who filed his or her petition from within the United States, USCIS will notify the alien of such approval on Form I–797, ''Notice of Action,'' and include Form I–94, ''Arrival-Departure Record,'' indicating U–1 nonimmigrant status.

(B) *Notice of Approval of Form I–918 for U–1 petitioners outside the United States.* After USCIS approves Form I–918 for an alien who filed his or her petition from outside the United States, USCIS will notify the alien of such approval on Form I–797, ''Notice of Action,'' and will forward notice to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the alien is located, or, for a visa exempt alien, to the appropriate port of entry.

(ii) *Denial of Form I–918.* USCIS will provide written notification to the petitioner of the reasons for the denial. The petitioner may appeal a denial of Form I–918 to the Administrative Appeals Office (AAO) in accordance with the provisions of 8 CFR 103.3. For petitioners who appeal a denial of their Form I–918 to the AAO, the denial will not be deemed administratively final until the AAO issues a decision affirming the denial. Upon USCIS' final denial of a petition for a petitioner who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(c)(1)(i), DHS may file a new Notice to Appear (see section 239 of the Act, 8 U.S.C. 1229) to place the individual in proceedings again. For petitioners who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(6) *Petitioners granted U interim relief.* Petitioners who were granted U interim relief as defined in paragraph (a)(13) of this section and whose Form I–918 is approved will be accorded U–1 nonimmigrant status as of the date that a request for U interim relief was initially approved.

(7) *Employment authorization.* An alien granted U–1 nonimmigrant status is employment authorized incident to status. USCIS automatically will issue an initial Employment Authorization Document (EAD) to such aliens who are in the United States. For principal aliens who applied from outside the United States, the initial EAD will not be issued until the petitioner has been admitted to the United States in U nonimmigrant status. After admission, the alien may receive an initial EAD, upon request and submission of a copy of his or her Form I–94, ''Arrival-Departure Record,'' to the USCIS office having jurisdiction over the adjudication of petitions for U nonimmigrant status. No additional fee is required. An alien granted U–1 nonimmigrant status seeking to renew his or her expiring EAD or replace an EAD that was lost, stolen, or destroyed, must file Form I–765 in accordance with the instructions to the form.

(d) *Annual cap on U–1 nonimmigrant status*—(1) *General.* In accordance with

section 214(p)(2) of the Act, 8 U.S.C. 1184(p)(2), the total number of aliens who may be issued a U–1 nonimmigrant visa or granted U–1 nonimmigrant status may not exceed 10,000 in any fiscal year.

(2) *Waiting list.* All eligible petitioners who, due solely to the cap, are not granted U–1 nonimmigrant status must be placed on a waiting list and receive written notice of such placement. Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions receiving the highest priority. In the next fiscal year, USCIS will issue a number to each petition on the waiting list, in the order of highest priority, providing the petitioner remains admissible and eligible for U nonimmigrant status. After U–1 nonimmigrant status has been issued to qualifying petitioners on the waiting list, any remaining U–1 nonimmigrant numbers for that fiscal year will be issued to new qualifying petitioners in the order that the petitions were properly filed. USCIS will grant deferred action or parole to U–1 petitioners and qualifying family members while the U–1 petitioners are on the waiting list. USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members.

(3) *Unlawful presence.* During the time a petitioner for U nonimmigrant status who was granted deferred action or parole is on the waiting list, no accrual of unlawful presence under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B), will result. However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS.

(e) *Restrictions on use and disclosure of information relating to petitioners for U nonimmigrant classification*—(1) *General.* The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved petition for U nonimmigrant status is prohibited unless the disclosure is made:

(i) By the Secretary of Homeland Security, at his discretion, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8;

(ii) By the Secretary of Homeland Security, at his discretion, to law enforcement officials to be used solely for a legitimate law enforcement purpose;

(iii) In conjunction with judicial review of a determination in a manner that protects the confidentiality of such information;

(iv) After adult petitioners for U nonimmigrant status or U nonimmigrant status holders have provided written consent to waive the restrictions prohibiting the release of information;

(v) To Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 U.S.C. 1641(c);

(vi) After a petition for U nonimmigrant status has been denied in a final decision;

(vii) To the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided the disclosure relates to information about a closed case and is made in a manner that protects the confidentiality of the information and omits personally identifying information (including locational information about individuals);

(viii) With prior written consent from the petitioner or derivative family members, to nonprofit, nongovernmental victims' service providers for the sole purpose of assisting the victim in obtaining victim services from programs with expertise working with immigrant victims; or

(ix) To federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.

(2) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

(3) Officials of the Department of Homeland Security are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the perpetrator of substantial physical or mental abuse and the criminal activity.

(f) *Admission of qualifying family members*—(1) *Eligibility.* An alien who has petitioned for or has been granted U–1 nonimmigrant status (*i.e.*, principal alien) may petition for the admission of a qualifying family member in a U–2 (spouse), U–3 (child), U–4 (parent of a U–1 alien who is a child under 21 years of age), or U–5 (unmarried sibling under the age of 18) derivative status, if accompanying or following to join such principal alien. A qualifying family member who committed the qualifying criminal activity in a family violence or trafficking context which established the principal alien's eligibility for U nonimmigrant status shall not be granted U–2, U–3, U–4, or U–5 nonimmigrant status. To be eligible for U–2, U–3, U–4, or U–5 nonimmigrant status, it must be demonstrated that:

(i) The alien for whom U–2, U–3, U–4, or U–5 status is being sought is a qualifying family member, as defined in paragraph (a)(10) of this section; and

(ii) The qualifying family member is admissible to the United States.

(2) *Filing procedures.* A petitioner for U–1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting a Form I–918, Supplement A, ''Petition for Qualifying Family Member of U–1 Recipient,'' for each family member either at the same time the petition for U–1 nonimmigrant status is filed, or at a later date. An alien who has been granted U–1 nonimmigrant status may apply for derivative U nonimmigrant status on behalf of qualifying family members by submitting Form I–918, Supplement A for each family member. All Forms I–918, Supplement A must be accompanied by initial evidence and the required fees specified in the instructions to the form. Forms I–918, Supplement A that are not filed at the same time as Form I–918 but are filed at a later date must be accompanied by a copy of the Form I–918 that was filed by the principal petitioner or a copy of his or her Form I–94 demonstrating proof of U–1 nonimmigrant status, as applicable.

(i) Qualifying family members in pending immigration proceedings. The principal alien of a qualifying family member who is in removal proceedings under section 240 of the Act, 8 U.S.C. 1229a, or in exclusion or deportation proceedings initiated under former sections 236 or 242 of the Act, 8 U.S.C. 1226 and 1252 (as in effect prior to April 1, 1997), and who is seeking U nonimmigrant status, must file a Form I–918, Supplement A directly with USCIS. ICE counsel may agree to file, at the request of the qualifying family member, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while the petition for U nonimmigrant status is being adjudicated by USCIS.

(ii) Qualifying family members with final orders of removal, deportation, or exclusion. An alien who is the subject

of a final order of removal, deportation, or exclusion is not precluded from filing a petition for U–2, U–3, U–4, or U–5 nonimmigrant status directly with USCIS. The filing of a petition for U–2, U–3, U–4, or U–5 nonimmigrant status has no effect on ICE's authority to execute a final order, although the alien may file a request for a stay of removal pursuant to 8 CFR 241.6(a) and 8 CFR 1241.6(a). If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the alien's removal.

(3) *Initial evidence.* Form I–918, Supplement A, must include the following initial evidence:

(i) Evidence demonstrating the relationship of a qualifying family member, as provided in paragraph (f)(4) of this section;

(ii) If the qualifying family member is inadmissible, Form I–192, ''Application for Advance Permission to Enter as a Non-Immigrant,'' in accordance with 8 CFR 212.17.

(4) *Relationship.* Except as set forth in paragraphs (f)(4)(i) and (ii) of this section, the relationship between the U–1 principal alien and the qualifying family member must exist at the time Form I–918 was filed, and the relationship must continue to exist at the time Form I–918, Supplement A is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States.

(i) If the U–1 principal alien proves that he or she has become the parent of a child after Form I–918 was filed, the child shall be eligible to accompany or follow to join the U–1 principal alien.

(ii) If the principal alien was under 21 years of age at the time he or she filed Form I–918, and filed Form I–918, Supplement A for an unmarried sibling under the age of 18, USCIS will continue to consider such sibling as a qualifying family member for purposes of U nonimmigrant status even if the principal alien is no longer under 21 years of age at the time of adjudication, and even if the sibling is no longer under 18 years of age at the time of adjudication.

(5) *Biometric capture and evidentiary standards.* The provisions for biometric capture and evidentiary standards in paragraphs (c)(3) and (c)(4) of this section also are applicable to petitions for qualifying family members.

(6) *Decision.* USCIS will issue a written decision approving or denying Form I–918, Supplement A and send notice of this decision to the U–1 principal petitioner. USCIS will include in a decision approving Form I–918 a list of nongovernmental organizations to which the qualifying family member can refer regarding his or her options while in the United States and available resources. For a qualifying family member who is subject to an order of exclusion, deportation, or removal issued by the Secretary, the order will be deemed canceled by operation of law as of the date of USCIS' approval of Form I–918, Supplement A. A qualifying family member who is subject to an order of exclusion, deportation, or removal issued by an immigration judge or the Board may seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings. ICE counsel may agree, as a matter of discretion, to join such a motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(i) *Approvals for qualifying family members within the United States.* When USCIS approves a Form I–918, Supplement A for a qualifying family member who is within the United States, it will concurrently grant that alien U–2, U–3, U–4, or U–5 nonimmigrant status. USCIS will notify the principal of such approval on Form I–797, ''Notice of Action,'' with Form I–94, ''Arrival-Departure Record,'' indicating U–2, U–3, U–4, or U–5 nonimmigrant status. Aliens who were previously granted U interim relief as defined in paragraph (a)(13) of this section will be accorded U nonimmigrant status as of the date that the request for U interim relief was approved. Aliens who are granted U–2, U–3, U–4, or U–5 nonimmigrant status are not subject to an annual numerical limit. USCIS may not approve Form I–918, Supplement A unless it has approved the principal alien's Form I–918.

(ii) *Approvals for qualifying family members outside the United States.* When USCIS approves Form I–918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval on Form I–797. USCIS will forward the approved Form I–918, Supplement A to the Department of State for delivery to the U.S. Embassy or Consulate having jurisdiction over the area in which the qualifying family member is located, or, for a visa exempt alien, to the appropriate port of entry.

(iii) *Denial of the Form I–918, Supplement A.* In accordance with 8 CFR 103.3(a)(1), USCIS will provide written notification of the reasons for the denial. The principal alien may appeal the denial of Form I–918, Supplement A to the Administrative Appeals Office in accordance with the provisions of 8 CFR 103.3. Upon USCIS' final denial of Form I–918, Supplement A for a qualifying family member who was in removal proceedings that were terminated pursuant to 8 CFR 214.14(f)(2)(i), DHS may file a new Notice to Appear (see section 239 of the INA, 8 U.S.C. 1229) to place the individual in proceedings again. For qualifying family members who are subject to an order of removal, deportation, or exclusion and whose order has been stayed, USCIS' denial of the petition will result in the stay being lifted automatically as of the date the denial becomes administratively final.

(7) *Employment authorization.* An alien granted U–2, U–3, U–4, or U–5 nonimmigrant status is employment authorized incident to status. To obtain an Employment Authorization Document (EAD), such alien must file Form I–765, ''Application for Employment Authorization,'' with the appropriate fee or a request for a fee waiver, in accordance with the instructions to the form. For qualifying family members within the United States, the Form I–765 may be filed concurrently with Form I–918, Supplement A, or at any time thereafter. For qualifying family members who are outside the United States, Form I–765 only may be filed after admission to the United States in U nonimmigrant status.

(g) *Duration of U nonimmigrant status*—(1) *In general.* U nonimmigrant status may be approved for a period not to exceed 4 years in the aggregate. A qualifying family member granted U–2, U–3, U–4, and U–5 nonimmigrant status will be approved for an initial period that does not exceed the expiration date of the initial period approved for the principal alien.

(2) *Extension of status.* (i) Where a U nonimmigrant's approved period of stay on Form I–94 is less than 4 years, he or she may file Form I–539, ''Application to Extend/Change Nonimmigrant Status,'' to request an extension of U nonimmigrant status for an aggregate period not to exceed 4 years. USCIS may approve an extension of status for a qualifying family member beyond the date when the U–1 nonimmigrant's status expires when the qualifying family member is unable to enter the United States timely due to delays in consular processing, and an extension of status is necessary to ensure that the qualifying family member is able to attain at least 3 years in nonimmigrant status for purposes of adjusting status under section 245(m) of the Act, 8 U.S.C. 1255.

(ii) Extensions of U nonimmigrant status beyond the 4-year period are available upon attestation by the certifying official that the alien's presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. In order to obtain an extension of U nonimmigrant status based upon such an attestation, the alien must file Form I–539 and a newly executed Form I–918, Supplement B in accordance with the instructions to Form I–539.

(h) *Revocation of approved petitions for U nonimmigrant status*—(1) *Automatic revocation.* An approved petition for U–1 nonimmigrant status will be revoked automatically if, pursuant to 8 CFR 214.14(d)(1), the beneficiary of the approved petition notifies the USCIS office that approved the petition that he or she will not apply for admission to the United States and, therefore, the petition will not be used.

(2) *Revocation on notice.* (i) USCIS may revoke an approved petition for U nonimmigrant status following a notice of intent to revoke. USCIS may revoke an approved petition for U nonimmigrant status based on one or more of the following reasons:

(A) The certifying official withdraws the U nonimmigrant status certification referred to in 8 CFR 214.14(c)(2)(i) or disavows the contents in writing;

(B) Approval of the petition was in error;

(C) Where there was fraud in the petition;

(D) In the case of a U–2, U–3, U–4, or U–5 nonimmigrant, the relationship to the principal petitioner has terminated; or

(E) In the case of a U–2, U–3, U–4, or U–5 nonimmigrant, the principal U–1's nonimmigrant status is revoked.

(ii) The notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation and the time period allowed for the U nonimmigrant's rebuttal. The alien may submit evidence in rebuttal within 30 days of the date of the notice. USCIS shall consider all relevant evidence presented in deciding whether to revoke the approved petition for U nonimmigrant status. The determination of what is relevant evidence and the weight to be given to that evidence will be within the sole discretion of USCIS. If USCIS revokes approval of a petition and thereby terminates U nonimmigrant status, USCIS will provide the alien with a written notice of revocation that explains the specific reasons for the revocation.

(3) *Appeal of a revocation of approval.* A revocation on notice may be appealed to the Administrative Appeals Office in accordance with 8 CFR 103.3 within 30 days after the date of the notice of revocation. Automatic revocations may not be appealed.

(4) *Effects of revocation of approval.* Revocation of a principal alien's approved Form I–918 will result in termination of status for the principal alien, as well as in the denial of any pending Form I–918, Supplement A filed for qualifying family members seeking U–2, U–3, U–4, or U–5 nonimmigrant status. Revocation of a qualifying family member's approved Form I–918, Supplement A will result in termination of status for the qualifying family member. Revocation of an approved Form I–918 or Form I–918, Supplement A also revokes any waiver of inadmissibility granted in conjunction with such petition.

(i) *Removal proceedings.* Nothing in this section prohibits USCIS from instituting removal proceedings under section 240 of the Act, 8 U.S.C. 1229(a), for conduct committed after admission, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts in Form I–918 or Form I–918, Supplement A and supporting documentation, or after revocation of U nonimmigrant status.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 9. The authority citation for section 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

■ 10. Section 248.1 is amended by revising paragraph (a) to read as follows:

§ 248.1 Eligibility.

(a) *General.* Except for those classes enumerated in § 248.2, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status pursuant to section 247 of the Act, 8 U.S.C. 1257, who is continuing to maintain his or her nonimmigrant status, may apply to have his or her nonimmigrant classification changed to any nonimmigrant classification other than that of a spouse or fianc(e), or the child of such alien, under section 101(a)(15)(K) of the Act, 8 U.S.C. 1101(a)(15)(K), or as an alien in transit under section 101(a)(15)(C) of the Act, 8 U.S.C. 1101(a)(15)(C). An alien defined by section 101(a)(15)(V), or 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(V) or 8 U.S.C. 1101(a)(15)(U), may be accorded nonimmigrant status in the United States by following the procedures set forth respectively in § 214.15(f) or § 214.14 of this chapter.

* * * * *

■ 11. Section 248.2 is amended by:
■ a. Revising the introductory text;
■ b. Redesignating the revised introductory text through paragraph (f) as paragraphs (a) introductory text through (a)(6); and by
■ c. Adding a new paragraph (b) to read as follows:

§ 248.2 Ineligibile Classes.

(a) Except as described in paragraph (b) of this section, the following categories of aliens are not eligible to change their nonimmigrant status under section 248 of the Act, 8 U.S.C. 1258:

* * * * *

(b) The prohibition against a change of nonimmigrant status for the categories of aliens described in paragraphs (a)(1) through (6) of this section is inapplicable to aliens applying for a change of nonimmigrant status to that of a nonimmigrant under section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U).

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 12. The authority citation for section 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

■ 13. Section 274a.12 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Amending paragraph (a)(14) by removing the word ''or'' at the end of the paragraph;
■ c. Removing the period at the end of paragraph (a)(16) and inserting a semicolon in its place;
■ d. Adding and reserving paragraphs (a)(17) and (18); and by
■ e. Adding new paragraphs (a)(19) and (20).

The revision and additions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized employment incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. Any alien who is within a class of aliens described in paragraphs (a)(3), (a)(4), (a)(6)–(a)(8), (a)(10)–(a)(15), or (a)(20) of this section, and who seeks to be employed in the United States, must apply to U.S.

Citizenship and Immigration Services (USCIS) for a document evidencing such employment authorization. USCIS may, in its discretion, determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States.

* * * * *

(17) [Reserved]

(18) [Reserved]

(19) Any alien in U–1 nonimmigrant status, pursuant to 8 CFR 214.14, for the period of time in that status, as evidenced by an employment authorization document issued by USCIS to the alien.

(20) Any alien in U–2, U–3, U–4, or U–5 nonimmigrant status, pursuant to 8 CFR 214.14, for the period of time in that status, as evidenced by an employment authorization document issued by USCIS to the alien.

* * * * *

■ 14. Section 274a.13 is amended by revising paragraph (a) introductory text to read as follows:

§ 274a.13 Application for employment authorization.

(a) *General.* Aliens authorized to be employed under section 274a.12(a)(3), (a)(4), (a)(6)–(8), (a)(10)–(15), and (a)(20) must file an Application for Employment Authorization (Form I–765) in order to obtain documentation evidencing this fact.

* * * * *

PART 299—IMMIGRATION FORMS

■ 15. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

■ 16. Section 299.1 is amended in the table by adding the entries for Forms ''I–918,'' ''I–918 Supplement A,'' and ''I–918 Supplement B'' in the proper alpha/numeric sequence.

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–918	8/15/07	Petition for U Nonimmigrant Status.
I–918 Supplement A	8/15/07	Petition for Qualifying Family Member of U–1 Recipient.
I–918 Supplement B	8/15/07	U Nonimmigrant Status Certification.
*	*	*

■ 17. Section 299.5 is amended in the table by adding the entries for Forms ''I–918,'' ''I–918 Supplement A,'' and ''I–918 Supplement B'' in the proper alpha/numeric sequence.

§ 299.5 Display of control numbers.

* * * * *

Form No.	Form title	Currently assigned OMB control No.
*	*	*
I–918	Petition for U Nonimmigrant Status	1615–0104
I–918 Supplement A	Petition for Qualifying Family Member of U–1 Recipient	1615–0104
I–918 Supplement B	U Nonimmigrant Status Certification	1615–0104
*	*	*

Dated: September 4, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–17807 Filed 9–14–07; 8:45 am]

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Federal Register

Monday,
September 17, 2007

Part V

Department of Transportation

Federal Aviation Administration

Proposed Advisory Circular No. 120–42B, Extended Operations (ETOPS) and Polar Operations; Notice Proposed Advisory Circular No. 135–42, Extended Operations (ETOPS) and Operations in the North Polar Area; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket Number FAA–2002–6717]

Proposed Advisory Circular No. 120–42B, Extended Operations (ETOPS) and Polar Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed Advisory Circular (AC): AC No. 120–42B, Extended Operations (ETOPS) and Polar Operations. Also in this **Federal Register**, the FAA publishes draft AC No. 135–42, Extended Operations (ETOPS) and Operations in the North Polar Area, for public comment.

DATES: Comments must be received on or before October 17, 2007.

ADDRESSES: Send all comments on the proposed AC to Docket Number FAA–2002–6717, using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Ryan, Air Transportation Division (AFS–220), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7493, e-mail *Jim.Ryan@faa.gov.*

SUPPLEMENTARY INFORMATION

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44703.

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC No. 120–42B and submit comments to the address specified under **ADDRESSES.** All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

An electronic copy of the proposed AC, which are published in full here, may be obtained by accessing the FAA's web page at—*http://www.faa.gov/regulations_policies/rulemaking/recently_published/.*

The Extended Operations (ETOPS) final rule was published in the **Federal Register** on January 16, 2007. This final rule applies to air carrier (part 121), commuter, and on-demand (part 135) turbine powered multi-engine airplanes used in extended-range operations. All-cargo operations in airplanes with more than two engines were exempted from most of the rule. It established regulations governing the design, operation and maintenance of certain airplanes operated on flights that fly long distances from an adequate airport. This advisory circular provides further guidance for these extended operations to those conducting operations under 14 CFR part 121. It also further clarifies the rule's requirements for Polar operations.

Issued in Washington, DC on August 27, 2007.

James J. Ballough,

Director, Flight Standards Service.

Draft Advisory Circular 120–42B, Extended Operations (ETOPS) and Polar Operations

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Chapter 1. General

100. Applicability. This AC concerns those certificate holders applying for approval to conduct ETOPS under § 121.161, as well as those certificate holders applying for approval to conduct flights where a portion of which traverse either the North or South Polar Areas, as defined in part 121, § 121.7. This AC also provides guidance in resolving operational issues to certificate holders currently conducting such operations.

101. Cancellations. The following AC's and policy letters are cancelled:

- AC 120–42A, Extended Range Operation with Two-Engine Airplanes, dated December 30, 1988;
- ETOPS Policy Letter (EPL) 95–1, 138-Minute ETOPS Operational Approval Criteria, dated December 19, 1994;
- EPL 20–1, 207-Minute ETOPS Operational Approval Criteria, dated March 21, 2000; and
- FAA Policy Letter, Guidance for Polar Operations, dated March 5, 2001.

102. Related Regulations. 14 CFR part 21, § 21.4; part 25, § 25.1535; part 121, §§ 121.7, 121.97, 121.99, 121.106, 121.135, 121.161, 121.162, 121.191, 121.197, 121.374, 121.410, 121.415, 121.565, 121.624, 121.625, 121.631, 121.633, 121.646, 121.687, 121.689, 121.703, 121.704, and 121.705; and part 121, appendix P (*http://www.gpoaccess.gov/ecfr*).

Chapter 2. Background on ETOPS

200. ETOPS Regulatory Requirements.

a. All two-engine airplanes and three- and four-engine passenger-carrying airplanes operated under part 121 are required to comply with § 121.161. This regulation imposes special requirements

for extended operations (ETOPS) for these airplanes. These operations are defined as:

(1) Two-Engine Airplanes. These are flights whose planned routing contains a point farther than 60 minutes flying time from an adequate airport at an approved one-engine-inoperative cruise speed in still air.

(2) Passenger-Carrying Airplanes with More Than Two Engines. These are flights whose planned routing contains a point farther than 180 minutes flying time from an adequate airport at an approved one-engine-inoperative cruise speed in still air.

b. To conduct ETOPS, the specified airplane-engine combination must be certificated to the airworthiness standards of transport-category airplanes and be approved for ETOPS. (Airplane certification guidance for ETOPS can be found in § 121.162 and § 25.1535, as well as AC 25.1535–1. As with all other operations, a certificate holder requesting any route approval must first show that it is able to satisfactorily conduct operations between each required airport as defined for that route or route segment, and any required en route alternate airport. Certificate holders must show that the facilities and services specified in §§ 121.97 through 121.107 (domestic and flag operations) and §§ 121.113 through 121.127 (supplemental and commercial operations) are available and adequate for the proposed operation. In addition, the certificate holder must be approved for ETOPS under part 121. This AC provides the additional guidance for certificate holder approval for ETOPS.

201. Evolution of ETOPS.

a. Section 121.161 has an extensive historical basis, which began as early as 1936. Before obtaining approval for operation in 1936, an applicant operating an airplane with two piston engines was required to show that intermediate fields available for safe takeoffs and landings were located at least at 100-mile intervals along the proposed route. Previously, the rule imposed restrictions only on two-engine airplanes based on the lack of satisfactory engine reliability in the operation. In response to improvements in engine design and reliability, and responding to the needs of industry, the FAA has provided guidance for deviations from the rule that have allowed two-engine operations to expand incrementally beyond the initial 60-minute restriction. Currently, engine reliability has improved to a level where the safety of the operations is not impacted so much by the number of engines, but by other factors that affect operations of all airplanes whose routings take them great distances from adequate airports. Throughout the evolution of the current § 121.161, the following factors have remained constant:

(1) The rule has always applied to all areas of operation, and has not been limited to overwater operations.

(2) Any additional restrictions imposed or, alternatively, any deviations granted to operate in excess of the basic requirements, were based on a finding by the Administrator that adequate safety would be provided in the proposed operation and current levels of safety would be maintained when all factors were considered. This finding was never limited to engine reliability alone.

(3) The airports used in meeting the provisions of the rule must be adequate for the airplane used (that is, available for safe landings and takeoff with the weights authorized).

(4) Adequate levels of safety within the operation are to be maintained. Operations over increasingly remote areas and the possibility of increased diversion lengths have a potentially negative impact on the safety of the diversion, and thus the operation as a whole. Additional regulatory requirements are intended to ensure that this potential increase in risk is mitigated and that adequate levels of safety within operations are retained.

(5) When considering the impact of operating at greater distances from airports, the certificate holder must show that the operation can be conducted at a level of reliability that maintains an acceptable level of risk.

b. In June of 1985, responding to the industry's desire to take advantage of the increased reliability and capabilities of two-engine airplanes, the FAA issued AC 120–42. This AC provided guidance on one means of obtaining deviation authority from § 121.161 to allow two engine airplanes to operate on routes up to 120 minutes from an adequate airport after demonstration of specific levels of in-service experience and systems reliability. The FAA amended this AC in 1988 (AC 120–42A) to permit two-engine airplanes to operate up to 180 minutes from an adequate airport. These ACs introduced the term ''ETOPS'' for those specific extended operations and addressed airplane and engine design aspects, maintenance programs, and operations. Both of these ACs encompassed the following precepts:

(1) Reliance on a two-step approval that included type design of the airplane-engine combination and approval of the certificate holder's operation.

(2) Risk, as measured by diversion length, is mitigated by application of regulations and guidance reflecting current best practices that address the type certification of the ETOPS airplane and its systems as well as the operational environment of such operations.

(3) ETOPS can be managed successfully, and the level of safety can be maintained, by up-to-date regulations and guidance that articulate quantifiable standards of reliability and experience.

c. The original guidance for extended-range operations with two-engine airplanes in AC 120–42 allowed an increase of up to 15 percent to the maximum diversion time of 120 minutes. This provision was eliminated with the release of the guidance in AC 120–42A, providing for operations up to 180 minutes. Recognizing a need for ETOPS diversion authority between 120 and 180 minutes, the FAA reinstated the 138-minute provision by issuing EPL 95 1 in 1994. In March of 2000, at the request of the industry, the FAA issued ETOPS Policy Letter (EPL) 20–1, 207 Minute ETOPS Operation Approval Criteria. This document provided a similar 15 percent increase in the 180-minute maximum diversion time and gave limited relief to ETOPS certificate holders in the specific case of North Pacific Operations.

d. Since the advent of the original § 121.161, extended two-engine airplane operations have been governed by this rule, and the process of evolving and progressive guidance has reflected the successful and ever-increasing experience of the industry. As capable as this body of guidance has been in the past, it became increasingly clear that a need existed to codify all the disparate documents into a single body of rules, and to update the existing rules to reflect all the industry improvements such progress has used as its basis. Consequently § 121.161 was revised to expand two-engine operational authority under successful ETOPS processes and require certain operations of all passenger-carrying part 121 airplanes to adopt ETOPS requirements. This AC reflects current § 121.161 regulatory requirements.

202. ETOPS Applicability to All Passenger-Carrying Airplanes Flown in Long-Range Operations.

a. AC 120–42 in 1985, and AC 120–42A in 1988, recognized the increasing reliability of turbojet engines and helped to establish type design and operational practices for safe and reliable long-range operations with two-engine airplanes. As the technology and reliability of two-engine airplanes continued to improve, due in large

measure to the requirements of these documents, such operations became compatible with those long-range operations typically associated with three- and four-engine airplanes. At the same time this technology brought two-engine airplanes to the arena of long-range operations, the infrastructure to support such operations was changing. Political and funding priorities forced the closure or reduction in basic services of a number of airports, military and civilian, in remote areas that historically had been used as diversion airports for routes over oceanic and/or desolate land areas. The increasing use of polar flights, while creating economic benefits, has also brought new challenges to the operation. The risks associated with these areas' remoteness, harsh climate and terrain, and their unique operational issues, needed to be addressed to maintain an equivalent level of safety in the operation.

b. These issues began to significantly impact the viability of all long-range two-engine airplane operations under current regulations, and likewise began to erode the basic safety net that long-range operations in three- and four-engine airplanes had relied on. Because of these pressures and the increasing commonality of all long-range operations, the data began to show that ETOPS requirements and processes are generally applicable to all long-range passenger-carrying operations, including those by three- and four-engine airplanes, and would improve the safety and viability of such operations. All long-range passenger-carrying airplanes, regardless of the number of engines, needed a viable diversion airport in the case of onboard fire, medical emergency, or catastrophic decompression. Ensuring availability of en route alternate airports, adequate fire fighting coverage at these airports, and fuel planning to account for depressurization are sound operational practices for all airplanes, including three- and four-engine airplanes. Likewise, planning for the maximum allowable diversion and worst-case scenarios should account for all airplane time-critical systems.

c. Unlike the ETOPS guidance provided for two-engine airplanes, there has been no regulatory framework governing the long-range operations of three- and four-engine airplanes.

For example, in emergencies such as loss of cabin pressure, current regulations require adequate oxygen supplies but do not require the operator to consider the amount of extra fuel necessary to reach a diversion airport.

(1) An analysis of operational data shows that between 1980 and 2000, 33 of the 73 cruise depressurization events on one manufacturer's airplanes occurred on airplanes with more than two engines.

(2) A study conducted by this manufacturer using a modern four-engine aircraft carrying normal route planning fuel reserves raises issues about the adequacy of the current fuel planning requirements in the event of a diversion.

d. Operational data shows that the diversion rate for all airplane-related and non-airplane-related causes are comparable between two-engine airplanes and airplanes with more than two engines. Consequently, the FAA has found that there is a need for all passenger carrying operations beyond 180 minutes from an adequate airport to adopt many of the ETOPS requirements that have been based on sound safety principles and successfully proven over many years of operations. Accordingly, the FAA revised § 121.161 to include passenger-carrying airplanes with more than two engines in these long-range operations.

203. ''Extended Operations.''

a. Since 1985, the acronym, ETOPS, has been defined as ''extended twin-engine operations'' and has been limited to part 121 airplanes with only two engines. Current regulations have extended these applications to all passenger-carrying airplanes operating in both 14 CFR parts 121 and 135, and the acronym has now been redefined to mean ''extended operations.'' This is to acknowledge the similarity of certain long-range passenger-carrying operations of all airplanes operating today, and the common issues that impact such operations.

b. Since 1988, the ETOPS limit for two-engine airplanes has been 180 minutes from an adequate airport at an approved one-engine-inoperative cruise speed under standard conditions in still air (excluding the limited authority in the North Pacific given under EPL 20–1, 207-Minute ETOPS Operational Approval Criteria, dated March 21, 2000). Service experience has shown that although limited, this authority has satisfactorily supported the vast majority of the world's current aviation routes.

c. Those areas not supported within 180-minute diversion authority tend to be routes over remote areas of the world that are uniquely challenging to the operation. These areas include the South Polar Region, a small section in the South Pacific, the southern South Atlantic Ocean between South America and Africa, the southern Indian Ocean and the North Polar area under certain winter weather conditions. The additional operational challenges of these routes are equally demanding of all airplanes, regardless of the number of engines, and include such issues as extremes in terrain and meteorology, as well as limited navigation and communications infrastructure. Support of a necessary diversion and subsequent recovery in such areas demands added training, expertise, and dedication from all certificate holders. The development of ETOPS requirements is intended to address all these issues.

d. Even though for continuity with current two-engine ETOPS the existing acronym ETOPS is retained, the ETOPS acronym has been re-defined. ETOPS has been expanded to include all passenger-carrying airplane operations where a proposed flight plan includes any point that is greater than 180 minutes from an adequate airport (at an approved one-engine-inoperative cruise speed under standard conditions in still air).

204. Preclude and Protect.

a. The whole premise of ETOPS has been to preclude a diversion and, if it were to occur, to have programs in place to protect the diversion. Under this concept, propulsion systems are designed and tested to ensure an acceptable level of in-flight shutdowns (IFSD), and other airplane systems are designed and tested to ensure their reliability. Two-engine airplane maintenance practices are enhanced to better maintain and monitor the condition of the engines and systems significant to ETOPS. The design of these enhanced practices has been a major factor in the joint development of the FAA's and industry's aggressive steps to develop a foundation to resolve problems with airplane systems and engines in order to minimize the potential for procedural and human errors, thereby precluding a diversion.

b. However, despite the best design, testing, and maintenance practices, situations occur that may require an airplane to divert. Regardless of whether the diversion is for technical (airplane system- or engine-related) or non-technical reasons, the certificate holder must have a flight operations plan to protect that diversion. For example, such a plan must include ensuring that pilots are knowledgeable about diversion airport alternates and weather conditions (§ 121.631), have the ability to communicate with the certificate holder's dispatch office and air traffic control (§§ 121.99 and 121.122), and have sufficient fuel to divert to the alternate (§ 121.646). Under the ''preclude and protect'' concept, various failure scenarios need to be considered. For example, during the design of the

airplane, time-limited systems such as cargo compartment fire suppression/containment capability are considered. Fuel planning must account for the possibility of decompression or the failure of an engine with considerations for in-flight icing conditions. Best options under these scenarios should be provided to the pilot before and during the flight.

c. This philosophy has been critical to the success of two-engine ETOPS in the past and has been applied to these airplanes in operations beyond 60 minutes from an adequate airport. This application is based on the requirements of § 121.161 and the engine inoperative diversion requirements of § 121.565. In-service data shows that all airplanes, regardless of the number of engines, divert from time to time for various causes. All passenger-carrying operations conducted where there are a limited number of en route airports, where the support infrastructure is marginal, or where there are challenging weather conditions should adopt many of the same elements of the same preclude and protect concept. If certificate holders plan to operate passenger-carrying airplanes with more than two engines in areas where en route airports are farther away than 180 minutes, these operations are also required to meet certain the standards defined under ETOPS to ensure that all efforts are made to preclude a diversion, and if a diversion does occur, that procedures are in place to protect that diversion.

205. ETOPS Areas of Operation.

a. ETOPS areas of operation are defined by § 121.7 to be areas beyond a certain distance from adequate airports measured by an airplanes one-engine inoperative cruise speed under standard conditions in still air. Because of the impact such distances might have on the diversion time of an airplane, regulatory guidance has been established for the planning, operational, and equipage requirements for such operations. A certificate holder must apply to the FAA for approval to operate in an ETOPS area using the methodologies in this AC and is granted ETOPS authority for a specific ETOPS area of operations in their operations specifications.

b. Most ETOPS authorities for two-engine ETOPS beyond 180 minutes are limited to a specific geographical region. Historically, ETOPS authorities for two-engine airplanes up to 180 minutes were developed based on a specific need in a particular operating area. Limiting expanded ETOPS authority beyond 180 minutes (for two-engine airplanes) has been extended and serves several purposes.

(1) The primary importance is the preclusion of an arbitrary use of diversion authority beyond that necessary to complete the operation safely and efficiently. Because it is accepted that increased diversion times potentially increase the risk of the operation a certificate holder must make every effort to plan ETOPS with a maximum diversion distance of 180 minutes or less, if possible.

(2) It should be a goal of all two-engine airplane flight planning to operate to the shortest diversion time that provides the widest range of options in the event of a diversion while recognizing the economic benefits of a more direct route and the safety benefits of diverting to an airport that is well equipped. Tying increased diversion authority to specific areas of operation accomplishes this goal while sufficiently addressing the operational needs of the industry.

(3) Likewise, this focus on specific needs and areas of operation does not add impetus to any perceived rationale for further degradation in the availability or capabilities of en route alternates in remote areas of the world. Although the industry has no direct authority to affect the actions of sovereign nations, it is reasonable to base operations on the value of en route alternate availability at reasonable diversion distances.

(4) In consideration of the successful history of three- and four-engine airplane operations and the reliability and redundancy of current engines used in this operation, ETOPS for these airplanes does not have similar restrictions and ETOPS authorities are not limited to geographic areas. However, like twin-engine operators, the three- and four-engine operator is required to designate the nearest available ETOPS alternate along the planned route of flight and must remain within a 240 minute diversion time if possible.

c. In its application for ETOPS authority, the certificate holder will typically request a specific ETOPS area of operation based on an analysis of proposed routings and the availability of airports sufficient to support the operational requirements of the ETOPS regulations. Because the operating rules distinguish between ETOPS up to 180 minutes, and ETOPS beyond 180 minutes, the requested level of ETOPS authority in a certificate holder's application will necessarily have to be assessed differently for ETOPS beyond 180 minutes.

(1) Two-Engine Airplanes Up to 180-Minute ETOPS and 207-Minute ETOPS Authority in the North Pacific Area of Operations. The ETOPS area of operation is the area bounded by distance circles representing the approved one-engine-inoperative cruise speed under standard conditions in still air chosen by the applicant. The actual flight plan must comply with the fuel supply requirements in § 121.646(b) and must therefore account for wind. However, the flight planning limitations of § 121.633(a) for airplane systems do not require the operator to account for wind in such calculations for flight planning and for determining the ETOPS area of operations in these cases. This allows the applicant to choose an operating authority in his or her application that is based on the ''ETOPS area of operation'' determination. In other words, the distance from alternates in a certificate holder's route planning exercise will be the same value used to determine the type design criteria for the airplane-engine combination used in the operation, and the ETOPS approval necessary to fly the route under all flight planning conditions.

(2) ETOPS Beyond 180 Minutes (Two-Engine Airplanes and All Passenger-Carrying Airplanes With More Than 2 Engines). As required by § 121.633(b), for ETOPS beyond 180 minutes for all airplanes, the ETOPS operation must account for the effects of wind and temperature on the calculated distances. Consequently the planning for an ETOPS flight beyond 180 minutes is more complex.

(a) The certificate holder should first conduct a route planning exercise for each planned city pairing to determine the diversion authority needed in still air conditions. If the route or segments of the route exceed 180 minutes based on one engine inoperative speed and still air, then a secondary planning exercise (that may be required seasonally) should be conducted that factors in expected winds and temperatures on that route. The distance between adequate alternate airports on the route is converted into time (minutes) computed for all engine cruise speed, as well as engine inoperative speed. The number of minutes cannot exceed the time-limited system certified capability (cargo fire suppression and the other most limiting system) that is identified in the aircraft flight manual less the 15-minute pad. The operator needs to determine how much system capability is required for the planned route and equip its airplane to have sufficient margins. Finally, for the actual flight, the operator's flight

planning must be within the airplane systems capability for the selected ETOPS alternate airports on the planned route based on diversion times that are calculated using known or forecast winds and temperature conditions.

(b) As a minimum, the certificate holder must ensure that the time-limited systems requirements of § 121.633(b) are met at the equal-time points between ETOPS alternates determined by the most limiting en route fuel supply requirements of § 121.646(b), commonly referred to as the ETOPS critical fuel scenario. Certificate holders flying three- and four-engine airplanes, prior to the established installation time and certification time requirements of the regulation for these systems and their airplanes, are exempt from these flight planning limitations.

(c) Once the required fire suppression systems are installed (no later than February 15, 2013) the certificate holder must follow the flight planning limitations of § 121.633(b)(1). As required by § 121.162(d), for airplanes with more than 2 engines manufactured on or after February 17, 2015, the Configuration, Maintenance and Procedures (CMP) document for that model will list the airplane's most limiting ETOPS Significant System time issued in accordance with § 25.3(c). The Certificate holder operating an airplane-engine combination with more than two engines is required to comply with § 121.633(b)(2) if the CMP lists the most limiting ETOPS Significant System time.

d. Credit for the Driftdown. For the purposes of computing distances for ETOPS Area of Operation, credit for driftdown may be taken.

e. Actual Diversion Time. Actual diversion time may exceed the authorized diversion time as long as the flight is conducted within the authorized ETOPS Area of Operation, and complies with the requirements of § 121.633.

206. ETOPS Alternate Requirements.

a. One of the distinguishing features of ETOPS operations is the concept of an en route alternate airport being available where an airplane can divert following a single failure or a combination of failures that require a diversion. Most airplanes operate in an environment where there usually is a choice of diversion airports available within a close proximity to the route of flight. However, a certificate holder conducting ETOPS may only have one alternate airport within a range dictated by the endurance of a particular airframe system (for example, the cargo fire suppressant system), and that system or system failure may dictate the approved maximum diversion time for that route. Therefore, it is important that any airport designated as an ETOPS alternate have the capabilities, services, and facilities to safely support the operation. The weather conditions at the time of arrival should provide assurance that adequate visual references will be available upon arrival at decision height (DH) or minimum descent altitude (MDA), and that the surface wind conditions and corresponding runway surface conditions will be acceptable to permit the approach and landing to be safely completed with an engine and/or systems inoperative.

b. At dispatch, an en route alternate must meet ETOPS alternate weather requirements in § 121.625 and as specified in Chapter 3, paragraph 303c(5) of this AC and in the certificate holder's operations specifications (OpSpecs). Because of the natural variability of weather conditions with time, as well as the need to determine the suitability of a particular en route alternate before departure, such requirements are higher than the weather minimums required to initiate an instrument approach. This is necessary prior to the time that the instrument approach would be conducted, to provide for some deterioration in weather conditions after planning. This increases the probability that the flight will land safely after a diversion to an alternate airport. The airport of departure (takeoff) and the destination airport (unless used concurrently as an ETOPS alternate) are not required to meet the weather minima for ETOPS alternates, as these airports are subject to other regulations (e.g., §§ 121.617, 121.621, and 121.623).

c. While en route, the forecast weather for designated ETOPS alternates must remain at or above operating minima. This provides ETOPS flights with the ability to resolve all diversion decisions successfully throughout the flight. The suitability of an en route alternate airport for an airplane that encounters an in-flight situation that necessitates a diversion during ETOPS operations is based on a determination that the airport still is suitable for the circumstances, and the weather and field conditions at that airport permit an instrument approach to be initiated and a landing completed.

207. ETOPS In-Service Experience Requirements.

a. When AC 120–42 was first released in 1985, two-engine ETOPS was a new concept and ETOPS approvals were sought on airframe-engine combinations that were already in service. Hence, it was logical to establish criteria for approvals based on in-service experience. At that same time, the FAA recognized the possibility that other approval methods could be developed without in-service experience, and accordingly, provided statements that recognized those options. The original two-engine ETOPS requirements for engine reliability were based on a world fleet in-service experience of 250,000 hours. For 120-minute ETOPS, the FAA additionally required the certificate holder to have 12 consecutive months of operational in-service experience with the airplane-engine combination (AEC). For 180-minute ETOPS, the FAA required the certificate holder to have previously gained 12 consecutive months of operational in-service experience with the specified AEC conducting 120-minute ETOPS. These basic, two-engine in-service requirements have been retained and are discussed in Appendix 3. Achieving these levels of experience, combined with the required levels of engine reliability, is an acceptable means of attaining ETOPS approval for operators of two-engine airplanes.

b. At the time AC 120–42A was drafted, the FAA recognized that a reduction of two-engine in-service experience requirements or substitution of in-service experience on another airplane would be possible. Any reduction was to be based on an evaluation of the certificate holder's ability and competence to achieve the necessary reliability for the particular AEC in ETOPS. For example, a reduction in in-service experience would be considered for a certificate holder who could show extensive in-service experience with a related engine on another airplane that had achieved acceptable reliability. The FAA also allowed certificate holders unable to initially fly ETOPS routes at the lesser thresholds to make use of ETOPS simulation or demonstration programs in their application for 180-minute ETOPS. Eventually specific guidance material (AC 120–42A, appendix 7, Accelerated ETOPS Operational Approval) was developed by the FAA permitting ETOPS without accumulating in-service experience in the airplane-engine combination. Most subsequent ETOPS approvals have been granted under these guidelines and this method is retained in Appendix 3.

208. Operational Reliability and Systems Suitability Requirements.

a. The safety of long-range operations such as ETOPS depends on the reliability of all airplane systems including the propulsion systems. Time-limited systems such as cargo compartment fire suppression/containment capability must be

considered (§ 121.633). The certificate holder must also have an established program that monitors the reliability of systems significant to ETOPS (§ 121.374).

b. In order to achieve and maintain the required engine reliability standards, the certificate holder operating a two-engine airplane in ETOPS should assess the proposed maintenance and reliability program's ability to maintain a satisfactory level of airplane systems reliability for the particular airplane-engine combination. All certificate holders must design the flight operations and, if applicable, the maintenance programs for ETOPS with an objective to preclude diversions and, if a diversion does occur, to protect that diversion. Required ETOPS maintenance practices also must minimize the potential for procedural and human errors that could be detrimental to the safety of the operation. Fuel planning must account for the possibility of a depressurization and/or failure of an engine with considerations for in-flight icing conditions (§ 121.646).

c. The type design requirements for ETOPS certification consider the probability of occurrence of conditions that would reduce the capability of the airplane or the ability of the flight crewmember to cope with an adverse operating condition. System failures or malfunctions occurring during extended range operations could affect flight crewmember workload and procedures. Although the demands on the flight crewmember may increase, a manufacturer applying for ETOPS type design approval must consider crew workload, operational implications, and the crew's and passengers' physiological needs during continued operation with failure effects for the longest diversion time for which it seeks approval. The manufacturer must also conduct flight tests to validate the adequacy of the airplane's flying qualities and performance, and the flightcrew's ability to safely conduct an ETOPS diversion with expected system failures and malfunctions. An ETOPS operator should carefully consider the possible adverse effects that changes in airplane equipment or operating procedures may have on the original evaluations conducted when the airplane was approved for ETOPS before implementing such changes.

d. Following a determination that the airframe systems and propulsion systems are ETOPS type design approved as per part 25, an in-depth review of the applicant's required ETOPS programs will be accomplished to show the ability to achieve and maintain an acceptable level of systems reliability, and to safely conduct these operations.

Chapter 3. Requirements for ETOPS Authorization

300. ETOPS Requirements. The FAA may approve ETOPS for various areas of operation in accordance with the requirements and limitations specified in part 121, Appendix P. ETOPS must be authorized in the certificate holder's operations specifications and conducted in compliance with those sections of part 121 applicable to ETOPS.

a. As of February 15, 2008, certificate holders operating passenger-carrying airplanes with more than two engines, having the authority to operate on specific ETOPS routes should not need to re-apply for their specific route authority. However, the certificate holder is required to comply with all the applicable ETOPS flight operational regulations described in this AC, and must have their ETOPS programs and processes approved by their CHDO with the concurrence of the Director, Flight Standards Service.

b. The certificate holder's ETOPS requirements must be specified in their maintenance and operations programs. Maintenance requirements necessary to support ETOPS are explained in paragraphs 301 and 302. Flight operations requirements necessary to support ETOPS are described in paragraphs 303 and 304.

c. The requirements for the various levels of ETOPS authorities are listed in tabular form in Appendix 2.

301. Maintenance Requirements for Two-Engine ETOPS Authorization. The certificate holder conducting ETOPS with two-engine airplanes must comply with the ETOPS maintenance requirements as specified in § 121.374. These requirements are discussed in paragraphs a through o as follows:

a. Continuous Airworthiness Maintenance Program (CAMP). The basic maintenance program for the airplane being considered for ETOPS is a CAMP that may currently be approved for a non-ETOPS certificate holder for a particular make and model airplane-engine combination. The basic CAMP must be a maintenance and inspection program that contains the instructions for continued airworthiness (ICA) based on the manufacturer's maintenance program, or those contained in a certificate holder's maintenance manual approved in its operations specifications. The certificate holder and its certificate holding district office (CHDO) must review the CAMP to ensure it provides an adequate basis for development of a ETOPS maintenance program. The certificate holder's ETOPS CAMP must include specific ETOPS requirements, which will be incorporated as supplemental requirements to the basic CAMP. These supplemental requirements include the enhanced maintenance and training processes that will ensure ETOPS airplanes achieve and maintain the level of performance and reliability necessary for ETOPS operations. These supplemental requirements, referred to in the industry as ETOPS processes or ETOPS process elements, currently should be in place for existing ETOPS operations. Prospective ETOPS certificate holders must supplement their basic CAMP with those program elements defined in paragraphs b through o below.

b. ETOPS Maintenance Document. The certificate holder must develop a document for use by personnel involved in ETOPS. This document need not be inclusive but should, at least, reference the maintenance program and other pertinent requirements clearly indicating where all facets of the ETOPS maintenance program are located in the certificate holder's document system. All ETOPS requirements, including supportive programs, procedures, duties, and responsibilities, must be identified. The ETOPS document(s) must reflect the actual policies and procedures the certificate holder expects their ETOPS maintenance personnel to adhere to. The document(s) should be user friendly, and be accessible to all affected personnel. The initial document must be submitted to the CHDO and be approved before being adopted.

c. ETOPS Predeparture Service Check (PDSC).

(1) The certificate holder must develop an ETOPS PDSC to verify that the airplane and certain significant items are airworthy and ETOPS capable. Each certificate holder's PDSC may vary in form and content. One certificate holder may have a one page PDSC while other certificate holders, using the same airplane-engine combination, may have six or more pages of items in their PDSCs. The prerequisites for an acceptable PDSC are content and suitability for the specific certificate holder's needs.

(2) All certificate holders must address ETOPS significant system airworthiness in their ETOPS maintenance program, including the PDSC. For example, proper servicing of fluids, such as engine, APU, generator systems, and hydraulic systems is a vital ingredient to successful ETOPS operations. Current ETOPS operations have had incidents resulting from

improper fluid servicing that have resulted in IFSDs and diversions. Certificate holders should consider this area very seriously when developing their maintenance checks, including the PDSC.

(3) Some certificate holders may elect to include tasks in the PDSC that are driven by their reliability programs and are not related to ETOPS significant systems. However, the certificate holder clearly must identify the ETOPS related tasks on their PDSC, because non-ETOPS qualified maintenance personnel may accomplish the non-ETOPS tasks. An ETOPS-qualified maintenance individual must complete all ETOPS-related tasks and an ETOPS-qualified maintenance individual, with an airframe and powerplant rating, must certify the entire check. When outside the United States, if an individual with an airframe and powerplant rating is not available, then a trained individual employed by an FAA certificated repair station, contracted by the certificate holder must certify the entire check. This PDSC must be certified complete immediately before each scheduled ETOPS flight. The term ''immediately'' has historically meant to be no more than 2 to 4 hours before the flight. However, the FAA may grant some relief from this time period under certain conditions. The certificate holder should explain any rational for such deviations in its ETOPS maintenance document, which is approved by its CHDO.

(4) A PDSC may not be required before all ETOPS flights. The FAA may grant relief following irregular operations because of non-mechanical issues, such as weather or medical emergency diversions, or when operating ETOPS into specific areas of operation. For example, if an airplane scheduled for an ETOPS flight receives a PDSC before departure and subsequently must divert or turn back for reasons other than mechanical, the certificate holder must identify in its ETOPS maintenance document what procedures its flight operations and maintenance personnel would follow to preclude performing another PDSC. If a mechanical discrepancy develops as a result of the diversion or turn back, the certificate holder may have to perform another PDSC. For example, when an overweight landing inspection reveals a discrepancy that requires maintenance intervention, another PDSC is required.

(5) In areas where prevailing weather conditions are stable and generally do not approach extremes in temperature, wind, ceiling, and visibility, such as in the Caribbean/Western Atlantic (75-minute ETOPS) and Micronesia routes (90-minute ETOPS), the service check may not be required for the return leg of an ETOPS flight. This check is not precluded by any other maintenance check.

d. Dual Maintenance.

(1) ETOPS dual maintenance, otherwise referred to as identical maintenance, multiple maintenance, and simultaneous maintenance, requires special consideration by the certificate holder. This is to recognize and preclude common cause human failure modes. Proper verification processes or operational tests, prior to ETOPS, are required when dual maintenance on significant systems occurs.

(2) Dual maintenance on the ''same'' ETOPS Significant System can be described as actions performed on the same element of identical, but separate ETOPS Significant Systems during the same routine or non-routine visit. Examples of maintenance on the ''same'' ETOPS Significant System are: maintenance of both Satellite Communication (SATCOM) systems during a turnaround flight; removal of either both engine oil filters, or both chip detectors; and replacement of both chip detectors.

(3) Dual maintenance on ''substantially similar'' ETOPS Significant Systems specifically addresses maintenance actions on engine-driven components on both engines. An example of dual maintenance on ''substantially similar'' ETOPS Significant Systems could include: replacement of the no. 1 Integrated Drive Generator (IDG) and the no. 2 Engine Driven Pump (EDP).

(4) The certificate holder must establish procedures that minimize identical maintenance actions from being scheduled or applied to multiple similar elements in any ETOPS Significant System during the same routine or non-routine maintenance visit. In order to manage this requirement the certificate holder must develop a list of fleet-specific ETOPS Significant Systems and include them in their ETOPS maintenance document(s).

(5) The FAA recognizes that sometimes ETOPS dual maintenance actions cannot be avoided or precluded because of unforeseen circumstances that occur during ETOPS operations. In the line maintenance arena, one example would be when an ETOPS airplane has inbound discrepancies on both engines' oil systems, or there is a generator replacement on one engine, and an oil system discrepancy on the other engine. Another example is if both of the SATCOM systems require maintenance at the same time during a turnaround flight. Additionally, staggering maintenance on ETOPS Significant Systems in the heavy maintenance arena is not always possible or feasible. However, to minimize human factor common cause risk, the certificate holder should attempt to minimize dual maintenance on ETOPS Significant Systems wherever/whenever possible.

(6) In any event, when dual maintenance is performed on a ETOPS Significant System, the certificate holder must have written procedures in its ETOPS maintenance document that addresses this situation. At a minimum, the certificate holder must ensure:

(a) Separate ETOPS-qualified maintenance persons perform the tasks, or

(b) The maintenance action on each of the elements in the ETOPS Significant System is performed by the same technician under the direct supervision of a second ETOPS qualified individual, and

(c) It verifies the effectiveness of the corrective actions to those ETOPS Significant Systems before the airplane enters the ETOPS area of operation. This verification action must be performed using ground verification methods, and in some instances, in-flight verification methods described in the next section of this AC. On an exception basis, the same ETOPS-qualified technician, under the supervision of an ETOPS-qualified Centralized Maintenance Control person, may perform the dual maintenance and the ground verification methods only if in-flight verification action is performed.

(7) The FAA acknowledges that the servicing of fluids and gases is not considered maintenance; however, these tasks, when done improperly have adversely affected ETOPS operations. The certificate holder should recognize the hazard associated with improper servicing and do all possible to mitigate the associated risk. Specifically, servicing tasks such as engine, APU, and generator system oil servicing are tasks that require high levels of attention. The FAA encourages the certificate holder to ensure that its programs have separate individuals perform such servicing. However, the FAA recognizes that many certificate holder's route and organizational structures may not lend themselves to these procedures. The certificate holder's program should include detailed servicing instructions, or make readily available servicing instructions, and provide related OJT, regardless of whether one individual or multiple individuals perform the tasks.

e. Verification Program.

(1) The certificate holder must develop a verification program for resolution of airplane discrepancies (corrective actions) on ETOPS significant systems. This program must include corrective action confirmation in specific areas such as engine shutdown, significant system failure, adverse trends, or any prescribed event that could effect an ETOPS operation. The program must ensure corrective action is taken and confirmed successful before the airplane enters an ETOPS area of operation. The certificate holder must verify the effectiveness of the corrective actions following the maintenance action and prior to an ETOPS flight or prior to passing the ETOPS entry point. The ground verification method is accomplished by following the Instructions for Continued Airworthiness (ICA) contained in the airplane maintenance manuals (AMM) or the certificate holder's maintenance manuals. These ICAs include built-in test equipment (BITE) and functional/operational checks that often include leak checks after ground runs.

(2) Normally ground verification is acceptable to ensure corrective action. Under certain conditions ground verification beyond that recommended in the ICA or in-flight verification may be required. An example of a condition that would require an in-flight verification is the replacement of an APU component that could affect the APU's ability to start at the ETOPS cruise altitude after cold soak. In-flight verification may be conducted on revenue flights, provided the action is completed before the ETOPS entry point. Ground maintenance personnel must coordinate with flight operations personnel whenever an in-flight verification is required. Each certificate holder must identify its ETOPS significant systems, ground verification requirements, and in-flight verification requirements in its ETOPS maintenance document.

(3) The certificate holder must establish a means to ensure any required verification action is accomplished. The certificate holder must include a clear description of who initiates verification actions and who is responsible for completing the actions in its ETOPS maintenance document.

f. Task Identification.

(1) The certificate holder must identify all tasks that must be accomplished or certified as complete by ETOPS qualified personnel. The intent is to have ETOPS trained maintenance personnel accomplish these identified tasks because they are related to ETOPS. ETOPS specific tasks should be:

(a) Identified on the certificate holder's work forms and related instructions, or

(b) Parceled together and identified as an ETOPS package.

(2) If a certificate holder does not identify ETOPS-related task in their current maintenance program, then all task must be accomplished by ETOPS-qualified personnel.

(3) In the event that maintenance is performed on an ETOPS airplane by personnel who are not ETOPS trained, then the actions must be verified per the certificate holder's ETOPS verification program.

g. Centralized Maintenance Control Procedures. An ETOPS certificate holder, regardless of the size of its ETOPS fleet, must have a centralized entity responsible for oversight of the ETOPS maintenance operation. The certificate holder must develop and clearly define in its ETOPS maintenance document specific procedures, duties, and responsibilities for involvement of their centralized maintenance control personnel in the ETOPS operation. These established procedures and centralized control processes would preclude an airplane from being dispatched for ETOPS flights after an engine IFSD, ETOPS significant system failure, or discovery of significant adverse trends in system performance without appropriate corrective action having been taken.

h. ETOPS Parts Control. The certificate holder must develop a parts control program to ensure the proper parts and configurations are maintained for ETOPS. The program must include procedures to verify that the parts installed on ETOPS airplanes during parts borrowing or pooling arrangements, as well as those parts used after repair or overhaul, maintain the required ETOPS configuration.

i. Reliability Program.

(1) The certificate holder must develop an ETOPS reliability program or enhance its existing reliability program to incorporate the ETOPS supplemental requirements. This program must be designed with early identification and prevention of ETOPS-related problems as the primary goal. The program must be event-oriented, and incorporate reporting procedures for critical events detrimental to ETOPS flights. For those certificate holders that do not have an FAA-approved reliability program, their continuing analysis and surveillance system (CASS) must be enhanced to achieve ETOPS reliability goals. The certificate holder should submit a monthly ETOPS reliability report to its CHDO.

(2) In keeping with the reporting requirements in § 121.703, the certificate holder must report the following items within 96 hours to its CHDO:

(a) IFSDs, except planned IFSDs performed for flight training.

(b) Diversions and turnbacks for failures, malfunctions, or defects associated with any airplane or engine system.

(c) Uncommanded power or thrust changes or surges.

(d) Inability to control the engine or obtain desired power or thrust.

(e) Inadvertent fuel loss or unavailability, or uncorrectable fuel imbalance in flight.

(f) Failures, malfunctions or defects associated with ETOPS Significant Systems.

(g) Any event that would jeopardize the safe flight and landing of the airplane on an ETOPS flight.

(3) The reporting of any of the above items must include the information specified in § 121.703(e).

(4) The certificate holder must conduct an investigation into the cause of the occurrence of any event listed in § 121.703 and § 121.374(h)(1) in conjunction with manufacturers and submit its findings to its CHDO. If the CHDO determines additional corrective action is necessary, the certificate holder must further investigate and implement appropriate corrective action acceptable to the CHDO.

j. Propulsion System Monitoring.

(1) The certificate holder must monitor its fleet average IFSD rate for the specified airplane-engine combination. It should establish firm criteria regarding the actions it will take when it detects adverse trends in propulsion system conditions. If the IFSD rate, computed on a 12-month rolling average, exceeds the values in the following table, the certificate holder, in conjunction with its CHDO, must investigate common cause effects or systemic errors and submit the findings to its CHDO within 30 days.

IN FLIGHT SHUT DOWN RATES

Number of engines	Engine hours ETOPS	ETOPS authorization
2	.05/1000	Up to and including 120 minutes.
2	.03/1000	Beyond 120 minutes up to and including 180 minutes and 207 minutes in North Pacific.
2	.02/1000	Greater than 180 minutes (Except for 207 minutes in North Pacific.

(2) With respect to maintenance, the purpose of monitoring IFSD rates is to provide FAA and operators with a tool for measuring the health of a fleet of ETOPS-approved airplanes in service. Causes of IFSDs or other engine and propulsion system problems may be associated with type design problems and/or maintenance and operational procedures applied to the airplane. It is very important that the certificate holder identify the root cause of events so that an indication of corrective action is available, such as a fundamental design problem that requires an effective hardware (or software) final fix. Repetitive inspections may be satisfactory as interim solutions, but longer-term design solutions, such as terminating actions, may be required if possible. Design problems can affect the whole fleet. The FAA will not revoke an existing ETOPS operational approval solely because of a high IFSD rate. A certificate holder who experiences a type design related event need not be operationally penalized for a problem that is design-related and may not be of their own making. However, maintenance or operational problems may be wholly, or partially, the responsibility of the certificate holder. If a certificate holder has an unacceptable IFSD rate risk attributed to common cause or a systemic problem in operational practices or the maintenance program, then action carefully tailored to that certificate holder may be required, and may include a reduction of the certificate holder's diversion limit.

(3) The certificate holder must investigate an IFSD rate higher than the 12-month rolling average standard that occurs for a mature fleet after the commencement of ETOPS (Refer to the IFSD Rates table above.). The certificate holder also must investigate any indication of a high IFSD rate; however, it must consider that in the case of the smaller fleet, the high IFSD rate may be because of the limited number of engine operating hours used as the denominator for the rate calculation. This can cause an IFSD jump well above the standard rate because of a single IFSD event. The underlying causes for such a jump in the rate will have to be considered by the Administrator's representative. On occasion, a particular event may also warrant implementation of corrective action even though the overall IFSD rate is not being exceeded.

(4) The 30-day reporting criteria of paragraph 301j (1) is intended to ensure that the certificate holder provides the FAA timely notification of the status of an event investigation. The certificate holder may or may not have root cause or terminating action at the end of the 30-day period, and further discussions with the FAA may be required after this period.

(5) The certificate holder may designate a sub-fleet engine/airframe combination for the purposes of the IFSD monitoring/rate program. The operator may include the IFSD statistics of all engines that are ETOPS configured and are maintained in accordance with the operators ETOPS program even if used on non-ETOPS airplanes.

k. Engine Condition Monitoring. The certificate holder must develop a program for its ETOPS engines that describes the parameters to be monitored, method of data collection, and corrective action processes. The program should reflect the manufacturer's instructions and industry practices, or the certificate holder should establish a program that demonstrates an equivalent level of monitoring and data analysis. The goal of this monitoring program is to detect deterioration at an early stage, and to allow for corrective action before safe operation is affected. Engine limit margins should be maintained so that prolonged engine inoperative diversions may be conducted without exceeding approved engine limits (for example, rotor speeds and exhaust gas temperature) at all approved power levels and expected environmental conditions. Engine margins preserved through this program should account for the effects of additional engine loading demands (for example anti-ice and electrical), which may be required during IFSD flight phase associated with the diversion. If oil analysis monitoring, such as the Spectrographic Oil Analysis Program (SOAP), is meaningful and recommended by the manufacturer, the certificate holder should include it in their program.

l. Oil Consumption Monitoring. The certificate holder must develop an engine oil consumption monitoring program to ascertain that there is enough oil to complete the scheduled ETOPS flight. The certificate holder's consumption limit must not exceed the manufacturer's recommendations, and it must trend oil consumption. The certificate holders trending program may be done manually or by electronic means. The program must consider the amount of oil added at the departing ETOPS station with reference to the running average consumption, as well as monitor for sudden increases in consumption. The monitoring must be continuous including non-ETOPS flights and the oil added at the ETOPS departure station. For example, after servicing, the oil consumption may be determined by maintenance personnel as part of the pre-departure check. The amount of oil added also could be reported to a centralized maintenance control for calculation before the ETOPS flight. If the APU is required for ETOPS, it must be included in the oil consumption monitoring program. Any corrective actions taken regarding oil consumption must be verified before ETOPS departure.

m. APU In-Flight Start Program.

(1) If the airplane type certificate requires an APU but does not normally require the APU to operate during the ETOPS portion of the flight, the certificate holder must develop an in flight start and run reliability program to ensure that the APU will continue to provide the performance and reliability established by the manufacturer. This monitoring program must include periodic sampling of each airplane's APU in-flight starting capabilities. Specifically, the certificate holder must ensure that each airplane's APU periodically is sampled rather than repeatedly sampling the same APUs. The certificate holder may adjust sampling intervals according to system performance and fleet maturity. The certificate holder and its CHDO should periodically review the certificate holder's APU in-flight start program data to ensure that the in-flight start reliability is maintained. Should the rolling 12-month APU in-flight start rate drop below 95 percent, the certificate holder should initiate an investigation into any common cause effects or systemic errors in procedures.

(2) The certificate holder should include the criteria below in their APU in-flight start program. The certificate holder should make APU in-flight starts subject to the following conditions:

(a) In-flight APU starts do not need to be performed on ETOPS flights; however, the APU must be in the ETOPS configuration in accordance with the appropriate CMP document, if applicable, for credit to be allowed.

(b) If in-flight APU start is performed on an ETOPS flight, the start may be attempted on the return leg.

(c) The start attempt should be initiated before top of descent, or at such time that will ensure a 2-hour cold soak at altitude before the start attempt.

(d) Within route or track constraints, the objective would be met by attempting a start near the highest altitude assigned the route or track, and the final attempt near the lower altitude limits of the route or track, as defined by ATC. These altitudes must be representative of the ETOPS routes flown.

(e) If the APU fails to start on the first attempt, subsequent start attempts may be made within the limits of the airframe and APU manufacturer design specifications stated in the applicable Aircraft Flight Manual (AFM) and AMM.

(3) The certificate holder must report any operationally required APU in-flight start failures occurring during actual ETOPS operations to its CHDO within 96 hours. The certificate holder also must report any occurrences of an ETOPS configured APU in-flight unsuccessful start attempt occurring during routine sampling (which exceed the airframe and APU manufacturer design specifications) to its CHDO. The final report should include corrective actions taken as well as the status of corrective action programs and fleet upgrades.

n. Configuration Maintenance and Procedures (CMP).

(1) The CMP Standard specifies any additional configuration, maintenance or operational requirement that is uniquely applicable to ETOPS. The requirements in the CMP are established by the FAA at the time of initial ETOPS type design approval of the airplane-engine combination. The CMP document typically is published and maintained by the airplane manufacturer and includes identified CMP requirements. Airplane manufacturers may continue to release CMP revisions beyond the basic revision level required for ETOPS. The CMP revision levels required for specific airplane-engine combinations are typically listed in the front of the CMP or may be controlled through issuance of customized CMP documents. The certificate holder must implement the basic configuration, maintenance, and operating procedures standard, identified in the CMP, before beginning ETOPS operations. If a CMP document exists for an ETOPS certificate holder's airplane, the certificate holder must ensure that all of the following apply:

(a) Configuration features are installed in the airplanes and engines;

(b) Maintenance procedures are incorporated into the maintenance program;

(c) Demonstrated capabilities are incorporated into the flight operations manual and the minimum equipment list, as required; and

(d) Operators must coordinate any deviation from the manufacturer's CMP requirements with the CHDO or ACO, as required by the CMP document.

(2) Each certificate holder must develop a system to ensure all CMP requirements remain incorporated in its airplanes, programs, and manuals throughout the operational life of each airplane, for as long as they operate in ETOPS.

(3) The FAA will mandate any subsequent CMP changes necessary for continued safe ETOPS operations through the airworthiness directive (AD) process. The certificate holder should review and consider voluntarily incorporating any revised CMP standard that enhances airplane reliability and/or performance.

(4) The certificate holder should provide its CHDO a matrix detailing the CMP standard for its proposed ETOPS fleet. The matrix should specifically include each CMP item number, revision level, item description, and reference documentation describing the incorporation method, date, and place.

o. Procedural Changes. Refer to Chapter 5, paragraph 502 for ETOPS maintenance and training program changes.

302. ETOPS Maintenance Training Requirements.

a. The certificate holder is responsible for ensuring that all maintenance personnel who perform maintenance on its ETOPS airplanes, including repair stations, vendors, and contract maintenance, have received adequate technical training for the specific airplane-engine combination it intends to operate in ETOPS. The certificate holder should review the existing airplane-engine combination maintenance training program with its CHDO to ensure that it adequately provides the necessary training.

b. Additionally, the certificate holder must develop ETOPS specific training that focuses on the special nature of ETOPS and take measures to insure that this training is given to all personnel involved in ETOPS. ETOPS specific training is in addition to the certificate holder's accepted maintenance training program used to qualify individuals for specific airplanes and engines and may be included in the accepted maintenance training curricula. It thus, becomes the certificate holder's ETOPS training program. The goal of this training is to ensure that all personnel involved in ETOPS properly accomplish ETOPS maintenance requirements. The certificate holder is responsible with acceptance from the CHDO to determine which personnel are involved in ETOPS, and ensure that each person's level of ETOPS training is commensurate with their level of involvement with ETOPS airplanes. For example, a mechanic who is performing pre-departure service checks may be required to have a higher level of ETOPS training and certification than a mechanic performing routine tasks on non ETOPS significant systems during a heavy maintenance check. A technician working ETOPS significant systems in an HMV (Heavy Maintenance Visit) environment must be appropriately trained for ETOPS, but need not be ETOPS certificated. Recurrent training in all maintenance areas should be established and used to inform personnel involved in ETOPS about new equipment, requirements, operator programs, etc. Experience has shown recurrent training is a valuable instrument in ''lessons learned'' for ETOPS operations.

c. In the line maintenance environment, ETOPS-qualified maintenance personnel are those who have successfully completed the certificate holder's ETOPS training program, and who have satisfactorily performed extended range tasks under the direct supervision of an FAA-certificated maintenance person. The person giving the direct supervision must have had previous experience with maintaining the particular make and model airplane being used by the certificate holder. For new airplanes, it is understood the certificate holder may not have an FAA certified maintenance person available who has previous experience with the newly introduced make and model airplane. In this instance, the training received from the manufacturer's maintenance training program, or a comparable program would be acceptable.

303. ETOPS Flight Operations Requirements

a. Airplane Performance Data. The certificate holder may not dispatch an

airplane on an ETOPS flight unless it makes performance data available to its flight crewmembers and dispatchers. This performance data will contain the following information:

(1) Detailed one-engine-inoperative performance data including fuel flow for standard and nonstandard atmospheric conditions, which should be demonstrated as a function of airspeed and power setting, where appropriate. This data will cover:

(a) Driftdown (includes net performance);

(b) Cruise altitude coverage including 10,000 feet;

(c) Holding; and

(d) Altitude capability (includes net performance).

(2) Detailed all-engine-operating performance data, including nominal fuel flow data, for standard and nonstandard atmospheric conditions, which should be demonstrated as a function of airspeed and power setting, where appropriate. This data will cover:

(a) Cruise altitude coverage including 10,000 feet; and

(b) Holding.

(3) Details of any other conditions relevant to ETOPS that can cause significant deterioration of performance, such as ice accumulation on the unprotected surfaces of the airplane, RAM Air Turbine (RAT) deployment, and thrust reverser deployment.

b. En Route Airport Information.

(1) In accordance with § 121.97, the certificate holder must maintain current status information on the operational capabilities of the airports designated for use as ETOPS alternates. ''Public protection'' has been a historic requirement for all domestic and flag operations. For ETOPS greater than 180 minutes and for operations traversing the North and South Polar Areas, this requirement has been expanded to include the listing of facilities at each airport, or in the immediate area, sufficient to protect the passengers and crew from the elements and to see to their welfare. Such a requirement can be interpreted to encompass the time from landing until satisfactory recovery of passengers and crew based on the certificate holder's passenger recovery plan required by § 121.135 and discussed in Chapter 4, paragraph 403c(5) of this AC.

(2) The certificate holder's program should provide flight crewmembers with current weather and information on a set of adequate airports in the ETOPS portion of the flight that are within the maximum diversion capability of the airplane on the planned route of flight as an aid to the flight crew in contingency planning. Any appropriate facility information and other data concerning these airports should be provided to flight crewmembers in a clear, concise, user-friendly format for use when planning a diversion.

(3) Section 121.135 requires that any certificate holder conducting passenger flag operations must include in their Flight Operations Manuals or equivalent documentation available to the flight crews:

(a) For ETOPS greater than 180 minutes, a specific passenger recovery plan for each ETOPS Alternate Airport used in those operations; and

(b) For operations in the North Polar Area and South Polar Area, a specific passenger recovery plan for designated diversion airports.

c. Dispatch.

(1) Alternates. A certificate holder may not dispatch an airplane in ETOPS unless the required takeoff, destination and alternate airports, including ETOPS alternate airports are listed in the cockpit documentation (e.g., computerized flight plan) and are identified and listed in the dispatch release. Because ETOPS alternates serve a purpose different from that of a destination alternate, and may be used in the event of a diversion with an engine failure or loss of a primary airplane system, a certificate holder should not list an airport on the dispatch/flight release as an ETOPS alternate unless that airport's services and facilities are adequate for such a diversion. A certificate holder of a two-engine airplane should exercise ETOPS beyond 180 minutes authority only if there are no ETOPS alternates that are within a 180-minute diversion distance from the planned route of flight. In addition, those adequate airports closest to the planned route of flight should be those first considered as ETOPS alternates.

(2) Flight Planning Limitation. The certificate holder's ETOPS flight planning program must ensure that the planned route of flight remains within the authorized ETOPS area of operation in accordance with § 121.633 as follows:

(a) For ETOPS up to and including 180 minutes and 207 minutes in the North Pacific Area of Operation, the time required to fly the distance to the planned ETOPS alternate, at the approved one-engine-inoperative cruise speed in still air and standard conditions, may not exceed the time specified for the airplane's most time limited ETOPS significant system (including cargo fire suppression) minus 15 minutes.

(b) For ETOPS beyond 180 minutes, the time required to fly the distance to the planned ETOPS alternate, at the all-engines-operating cruise speed at the normal all-engine-cruise altitude, correcting for wind and temperature, may not exceed the certified capability for the airplane's most limiting fire suppression system minus 15 minutes. Three- and four-engine turbine engine-powered airplanes not meeting these requirements as of the effective date of § 121.633 may continue ETOPS operations until February 15, 2013.

(c) Further, for ETOPS beyond 180 minutes, the time required to fly the distance to the planned ETOPS alternate, at the approved one-engine-inoperative cruise speed at the normal one engine inoperative level off altitude, correcting for wind and temperature, may not exceed the certified capability for the airplane's most time limited ETOPS significant system (except for the most limiting fire suppression system) minus 15 minutes.

Note: Certificate holders flying three- and four-engine airplanes prior to the established installation time and certification time requirements of the regulation for these systems and their airplanes are exempt from these flight planning limitations. Once such required fire suppression systems are installed (no later than February 15, 2013) and once the ETOPS significant system time limits are established and placed in the CMP as required by 121.162(d) (no later than February 17, 2015), the operator must follow the flight planning limitations in 121.633(b)(1) and 121.633(b)(2).

(3) Landing Distance. For the runway expected to be used, the landing distance available, as specified by the airport authority, must be sufficient based on airplane flight manual landing performance data to meet the landing distance limitations specified in § 121.197. The altitude of the airport, wind conditions, runway surface conditions, and airplane handling characteristics should be taken into account.

(4) Airport Rescue and Fire-Fighting Service (RFFS).

(a) The following minimum International Civil Aviation Organization (ICAO) rescue and fire-fighting service (RFFS) categories must be available at each airport listed as an ETOPS Alternate Airport in a dispatch or flight release:

1. ETOPS Up to 180 Minutes. ETOPS alternates with ICAO Category 4.

2. ETOPS Greater than 180 Minutes. ETOPS alternates with Category 4. In addition, the airplane must remain within the ETOPS authorized diversion time from an Adequate Airport that has RFFS equivalent to that specified by ICAO Category 7, or higher. The availability of Adequate Category 7

RFFS airports must be considered for the entire ETOPS segment of the planned route.

(b) If the necessary equipment and personnel are not immediately available at the airport, additional fire fighting support may be brought in from a nearby town or other location. The certificate holder must ensure that the nearby facility is capable of responding to a request for firefighting assistance within a reasonable time. A 30-minute response time is deemed adequate if the initial notification to respond can be initiated while the diverting airplane is en route. A 30-minute response time does not imply that the firefighting equipment has to be at the airport within 30 minutes of the initial notification under all conditions. It does mean that such equipment must be available on arrival of the diverting airplane and remain on station as long as the services are needed.

(5) ETOPS Alternate Minima. A particular airport may be considered to be an ETOPS alternate for flight planning and dispatch purposes, if the latest available forecast weather conditions from the earliest time of landing to the latest time of landing at that airport, equals or exceeds the criteria detailed in the following table. Because OpSpecs alternate weather minima standards apply to all alternates, the following criteria is recommended for a typical certificate holder's OpSpecs. An individual certificate holder's OpSpecs must reflect current requirements (§ 121.625). Although no consideration for the use of GPS/RNAV approaches is presented here, operators may request to receive this authorization through the FAA. This authorization would be reflected in the operator's OpSpecs. Appropriate ETOPS alternate minima for such operations will be determined by the Director, Flight Standards Service. The airport of departure (takeoff) and the destination airport (unless used concurrently as an ETOPS alternate) are not required to meet the weather minima for ETOPS alternates as these airports are subject to other regulations (e.g., §§ 121.617, 121.621, and 121.623).

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ETOPS Alternate Minimum

Approach Facility Configuration[1]	Alternate Airport IFR Weather Minimum Ceiling[2]	Alternate Airport IFR Weather Minimum Visibility[3]
For airports with at least one operational navigational facility providing a straight-in non-precision approach procedure, or Category I precision approach, or, when applicable, a circling maneuver from an instrument approach procedure.	Add 400 ft to the MDA or DH, as applicable.	Add 1 sm or 1600m to the landing minimum.
For airports with at least two operational navigational facilities, each providing a straight-in approach procedure to different suitable runways.	Add 200 ft to the higher DH or MDA of the two approaches used.	Add ½ sm or 800m[4] to the higher authorized landing minimum of the two approaches used.
One useable authorized Category II ILS IAP.	300 feet	3/4 sm (1200 m) or RVR 4000 (1200 m)
One useable authorized category III ILS Instrument Approach Procedure (IAP).	200 feet	1/2 sm (800 m)[4] or RVR 1800 feet (550 m)

[1] When determining the usability of an IAP, wind plus gust must be forecast to be within operating limits, including reduced visibility limits, and should be within the manufacturer's maximum demonstrated crosswind value.

[2] Conditional forecast elements need not be considered, except that a PROB40 or TEMPO condition below the lowest applicable operating minima must be taken into account.

[3] When dispatching under the provisions of the MEL, those MEL limitations affecting instrument approach minima must be considered in determining ETOPS alternate minima.

[4] For operations outside United States, because of variations in the international metric weather forecasting standards, 700m may be used in lieu of 800m.

(6) Fuel Supply. The certificate holder must comply with the ETOPS en-route fuel supply as specified in § 121.646(b) as follows:

(a) No person may dispatch or release for flight or takeoff a turbine engine-powered airplane in ETOPS unless,

considering wind and other weather conditions expected, it has the fuel required by normal Flag requirements and enough fuel to satisfy paragraphs 1 through 4 below:

1. The greater amount of fuel sufficient to fly to an ETOPS alternate under the following three scenarios:

• Assuming a rapid decompression at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 121.333, or

• At the approved one-engine-inoperative cruise speed assuming a rapid decompression and a simultaneous engine failure at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 121.333, or

• At the approved one-engine-inoperative cruise speed assuming an engine failure at the most critical point followed by descent to the one-engine-inoperative cruise altitude.

2. Upon reaching the alternate, hold at 1,500 ft above field elevation for 15 minutes and then conduct an instrument approach and land.

3. Add a 5 percent wind speed factor (that is, an increment to headwind or a decrement to tailwind) on to the actual forecast wind used to calculate fuel in paragraph 1 above to account for any potential errors in wind forecasting. If a certificate holder is not using the actual forecast wind based on a wind model acceptable to the FAA, the airplane must carry 5 percent of the fuel required for paragraph 1 above, as reserve fuel to allow for errors in wind data. A wind aloft forecast distributed worldwide by the World Area Forecast System (WAFS) is an example of a wind model acceptable to the FAA.

4. After completing the calculation in paragraph 3, compensate in paragraph 1 above with additional fuel for the greater of the following scenarios:

• The effect of airframe icing during 10 percent of the time during which icing is forecast (including ice accumulation on unprotected surfaces, and the fuel used by engine and wing anti-ice during this period). Unless a reliable icing forecast is available, icing may be presumed to occur when the total air temperature at the approved one-engine cruise speed is less than +10 degrees Celsius, or if the outside air temperature is between 0 degrees Celsius and −20 degrees Celsius with a relative humidity of 55 percent or greater.

• Fuel for engine anti-ice, and if appropriate wing anti-ice, for the entire time during which icing is forecast.

(b) Unless the certificate holder has a program established to monitor airplane in-service deterioration in cruise fuel burn performance, and includes in fuel supply calculations fuel sufficient to compensate for any such deterioration, increase the final calculated fuel supply by 5 percent to account for deterioration in cruise fuel burn performance.

(c) If the APU is a required power source, then its fuel consumption must be accounted for during the appropriate phases of flight.

(d) In computing the ETOPS alternate fuel supply, advantage may be taken of driftdown computed at the approved one-engine-inoperative cruise speed. Accounting of wing anti-ice as in paragraph (6)(a)4 above may apply to some models of airplane based on their characteristics and the manufacturer's recommended procedures.

(7) Communications. The FAA has determined that the best way to assure clear and timely communication in general, is via voice communication. Likewise the FAA has determined that there is a significant safety benefit associated with an ETOPS flight having the ability to communicate via a satellite based voice system, especially for those situations that occur while on long, remote ETOPS routes. The need for safety is best served through information and technical assistance that is clearly and rapidly transmitted to the flight crew in a way that requires the least amount of distraction to piloting duties. Other than the area north of 82 degrees latitude, satellite communications provides the best means to provide that capability because it is not limited by distance. The FAA recognizes the limitations of satellite communications (SATCOM) in the North Polar Area above this latitude, and in such an area an alternate communication system such as HF voice or data link is to be used. The relatively short period of time that the flight is above latitude 82 degrees North in relation to the total planned flight time is a small fraction of the total flight. The ability to use SATCOM for all other portions of the flight, which for some routes could be longer than 15 hours duration, is advantageous to the flight. For flights above 82 degrees North latitude, the operator must also ensure that communications requirements can be met by the most reliable means available, taking into account the potential communication disruption due to solar flare activity. The same philosophy and commensurate requirements apply for ETOPS in the South Polar Area.

(a) Section 121.99(a) includes a requirement for communications facilities that enable rapid and reliable communications on routes and altitudes that may be used. For all ETOPS each certificate holder conducting flag or supplemental operations in ETOPS must provide voice communications over routes where voice communications facilities are available. Where voice communication facilities are not available, and voice communication is not possible or is of poor quality, communications using alternative systems must be substituted.

(b) In addition to the communication requirement above, flag and supplemental certificate holders operating ETOPS beyond 180 minutes from an alternate must have a second communications system that is capable of providing immediate satellite-based voice communications of landline telephone fidelity such as SATCOM. This system must be capable of providing clear voice communications between the flight crewmember and air traffic control, and the flight crewmember and operations (dispatch). Where clear satellite-based voice communications are not available, alternative communications systems must be substituted. If an operator has provided a satellite communication system for the crew to satisfy § 121.99(a), it is not necessary that the second communication system required for ETOPS beyond 180 minutes be satellite based.

(c) In determining whether such communications requirements discussed in paragraphs (a) and (b) above are available, the certificate holder must consider potential routes and altitudes needed for possible diversions to ETOPS alternates as well as the original planned routing.

(8) Dispatch/Flight Release.

(a) The following items must be listed in the dispatch or flight release for all ETOPS in accordance with § 121.687:

1. ETOPS alternates, and

2. The authorized ETOPS diversion time under which the flight is dispatched or released.

(b) The pilot in command (PIC) must have access to the weather and status of services and facilities at all adequate airports with weather greater than approach minimums other than the designated ETOPS alternates along the planned route that could be used for diversion before accepting the flight release.

(c) If a flight is dispatched on a route that is greater than 180 minutes from an ETOPS alternate, the certificate holder must inform the flight crew and give them the reason for the routes selection.

(9) Dispatch on a ''Flight-by-Flight Exception'' Basis. For two-engine

airplane ETOPS approvals under the provisions of 207-minute ETOPS in the North Pacific Area of Operation, and 240-minute ETOPS in the North Polar Area, in the area north of the NOPAC area, and the Pacific Ocean area north of the equator, regulations limit the operator's use of this authority in these areas to an ''exception'' basis. This exception may only be used when an ETOPS alternate is not available within 180 minutes and is based on certain criteria.

(a) For 207-Minute ETOPS, exception criteria includes political or military concerns, volcanic activity, temporary airport conditions, and airport weather below dispatch requirements, or other weather related events.

(b) For 240-Minute ETOPS in the North Polar Area and in the Area North of NOPAC, exception criteria includes extreme conditions particular to these areas such as volcanic activity, extreme cold weather at en-route airports airport, weather below dispatch requirements, temporary airport conditions and other weather related events. The certificate holder must establish the criteria to be used to decide what extreme weather precludes using an airport.

(c) For 240-Minute ETOPS in the Pacific Ocean Area north of the Equator, exception criteria includes political or military concern, volcanic activity, airport weather below dispatch requirements, temporary airport conditions and other weather related events.

Note: Certificate holders are required to maintain a record of their use of that authority for tracking purposes. When an operator is granted such authority, they may exercise this authority based on the conditions above without limit. There is currently no requirement for any specific format for reporting 207- and 240-minute track usage.

d. En Route.

(1) Pilot-in-Command Authority. No part of this AC is to be interpreted as reducing the PIC's joint responsibility for determining that the flight can be safely conducted as planned before release. None of the guidance in this AC may be interpreted in any way to prejudice or limit the final authority and responsibility of the PIC for the safe operation of the airplane.

(2) Potential Diversion Airports after Departure.

(a) After departure, designated ETOPS alternates must continue to meet the requirements of original dispatch, except that the weather must remain at, or above, operating minima (§ 121 .631(c)). The pilot and dispatcher should monitor the airports within the ETOPS area of operation that could be used for diversion for deterioration in the weather and limitations in the availability of facilities and services that would render an airport unsuitable for landing in the event of a diversion. During the course of the flight, the flight crewmembers should be informed of significant changes in conditions at the designated ETOPS alternates, particularly those conditions that would render an airport unsuitable for landing and improvement in airport weather to conditions above operating minima.

(b) In most ETOPS operations, the ETOPS entry point is a significant distance from the point of dispatch. To ensure the capability and availability of an en route alternate to support any en route contingencies, before an ETOPS flight proceeds beyond the ETOPS entry point, the certificate holder must evaluate the weather from the earliest to latest time of arrival at the designated ETOPS alternates, as well as the landing distances, airport services, and facilities. If any conditions, such as weather below landing minima, are identified that would preclude a safe approach and landing, the PIC should be notified and an additional ETOPS alternate selected where a safe approach and landing can be made. A revised flight plan should include information on the newly designated ETOPS alternates within the authorized area of operation. Information on the weather and capabilities (that is, emergency response, approach aids, navigation facilities, and airport infrastructure) of potential ETOPS alternates in the authorized area of operations should be available to the PIC. The maximum diversion time, determined by the newly selected ETOPS alternate, must not exceed the authorized ETOPS maximum diversion time listed in the certificate holder's OpSpec for that airplane and operating area that could have been applied at original dispatch.

(c) An operator is not required to turn back once the flight has gone beyond the ETOPS entry point if an unexpected worsening of the weather at the designated ETOPS alternate airport drops the airport below operating landing minima (or any other event occurs that makes the runway at that airport unusable). The FAA requires that the pilot-in-command, in coordination with the dispatcher if appropriate, will exercise judgment in evaluating the situation and make a decision as to the safest course of action. This may be a turn back, re-routing to another ETOPS alternate airport, or continuing on the planned route. Should the operator become aware of a potential weather problem prior to the airplane entering the ETOPS stage of the flight, the rule allows the operator to designate a different alternate airport at the ETOPS entry point in order to continue the flight.

(3) Engine Failure.

(a) Section 121.565 requires the PIC of a two-engine airplane with one engine inoperative to land at the nearest suitable airport where, in the PIC's judgment after considering all relevant factors, a safe landing can be made. This determination is especially critical for ETOPS where the availability of suitable airports may be limited and the diversion decision is therefore more critical. The following is a list of some, but not all, factors that may be relevant in determining whether or not an airport is suitable, and are consistent with the ETOPS principle of protecting the diversion once it occurs:

- Airplane configuration, weight, systems status, and fuel remaining
- Wind and weather conditions en route at the diversion altitude
- Minimum altitudes en route to the diversion airport
- Fuel burn to the diversion airport
- Airport's nearby terrain, weather, and wind
- Availability and surface condition of runway
- Approach navigation aids and lighting available
- Rescue and fire fighting services (RFFS) at the diversion airport
- Facilities for passenger and crewmember disembarkation, and accommodations
- PIC's familiarity with the airport
- Information about the airport provided to the PIC by the certificate holder.

(b) When operating a two-engine airplane with one engine inoperative, none of the following factors should be considered sufficient justification to fly beyond the nearest suitable airport:

- The fuel supply is sufficient to fly beyond the nearest suitable airport;
- Passenger accommodation other than passenger safety;
- Availability of maintenance and/or repair resources.

(c) If no more than one engine is shut down on an airplane that has three or more engines, § 121.565 permits the PIC to fly beyond the nearest suitable airport in point of time if the PIC determines that doing so is as safe as landing at the nearest suitable airport. In making a decision to fly beyond the nearest suitable airport, the PIC should consider all relevant factors and, in addition, consider the possible difficulties that may occur if the flight is continued beyond the nearest suitable airport. When an airplane with more than two engines bypasses a suitable alternate,

the PIC must carefully weigh the risk associated with the next possible failure, which could complicate or compound the current engine inoperative condition. The next possible failure could be a system failure or another engine failure, which in either case, would affect crew workload and their possible success in completing the associated abnormal approach and landing procedures. It is even possible that a contingency outside of the realm of a system failure, such as a passenger illness, could compound the crew's workload normally associated with the current failure condition.

(4) System Failure/Partial Failure.

(a) During ETOPS, the limited availability of diversion airports and extended diversion distances require that the impact of a system failure or partial failure be carefully evaluated. This should include a careful assessment of remaining systems and overall operational capability. Time permitting, full use should be made of the information available through the certificate holder's dispatch facility and a determination made by the PIC as to the plan for the safe continuation of the flight, that is whether it is safer to divert and land or to continue as planned under the circumstances.

(b) If, as a result of reevaluating airplane systems, a change in flight plan is required, the PIC should be provided revised flight plan information and an update of conditions, including weather conditions at designated ETOPS alternates. Dispatch should advise the flight crewmembers of additional airports on the planned route of flight that could be used for diversion. In no case may the maximum approved diversion authority of the operation be exceeded.

(5) Other Diversion Scenarios. During ETOPS an airplane may divert for reasons other than engine or systems failure such as medical emergencies, onboard fire, or decompression. When considering the nature of the emergency and the possible consequences to the airplane, passengers and crew will dictate the best course of action suitable to the specific en route contingency. The flight crew must decide on the best course of action based on all available information. The ETOPS Alternate Airports required by § 121.624 and designated for a particular flight provide one option to the PIC. However, these ETOPS alternates may not be the only airports available for the diversion and nothing in this guidance in any way limits the authority of the pilot-in-command.

e. ETOPS Procedures Documentation.

(1) The certificate holder should develop unique ETOPS flight crew procedures for each of the flight operations requirements discussed in this section. These procedures should be contained in the applicable pilot flight manual. The pilot flight manual should also contain procedural information necessary to interface with ETOPS maintenance requirements such as;

- Fuel crossfeed valve operational check (if applicable)
- Special ETOPS MEL requirements
- APU in-flight start procedures (if applicable)
- Engine Condition Monitoring (ECM) data recording procedures
- In-flight verification of ETOPS significant systems

(2) The initial pilot flight manual ETOPS section and each revision must be submitted to the CHDO and approved before being adopted.

304. Flight Operations Training Requirements.

a. ETOPS Unique Requirements. The certificate holder's approved training program for ETOPS should include training that describes the unique aspects of ETOPS. That training should include, but not be limited to:

(1) Diversion Decision Making. The certificate holder's training program should prepare flight crewmembers to evaluate probable propulsion and airframe systems malfunctions and failures. The goal of this training should be to establish flight crewmember competency in dealing with the most probable operating contingencies.

(2) Specific ETOPS Requirements. The certificate holder's ETOPS training program should provide and integrate training for flight crewmembers and dispatchers (if applicable), as listed below. The FAA will periodically evaluate a cross-section of these items.

(a) Flight planning, including contingency data, that is engine failure, decompression, and diversion equal time point.

(b) Flight progress monitoring and fuel tracking.

(c) Operational restrictions associated with dispatch under the minimum equipment list (MEL).

(d) Non-normal procedures including:

1. Abnormal and emergency procedures.

2. Systems failures and remaining airplane capability as it relates to the decision to divert or to continue.

3. Diversion.

4. Crewmember incapacitation.

5. A simulated approach and missed approach with only an alternate power source available, if the loss of two main alternating current electrical power sources with no APU electrical source available results in significant degradation of instrumentation to either pilot.

(e) Use of emergency equipment associated with ETOPS operations, including cold weather gear and SATCOM.

(f) Procedures to be followed in the event that there is a change in conditions at an ETOPS alternate listed on the dispatch/flight release that would preclude a safe approach and landing.

(g) Procedures to be followed in the event that there is a change in conditions at other potential en route diversion airports that would preclude a safe approach and landing.

(h) Understanding and effective use of approved additional or modified equipment required for ETOPS.

(i) Fuel quantity comparison: The certificate holder's training program should identify fuel management procedures to be followed during the en route portion of the flight. These procedures should provide for an independent crosscheck of fuel quantity indicators, for example, fuel used, subtracted from the total fuel load, compared to the indicated fuel remaining.

(j) Fuel management: Accounting for discrepancies between planned fuel remaining and actual fuel remaining for example estimated time of arrival ahead of or behind plan, gross weight, and/or altitude differences.

(k) Flight crew procedures unique to ETOPS as listed above in the paragraph 303(e).

(3) Passenger Recovery Plan. The certificate holder must provide training to the flight crewmembers and dispatchers relative to their perspective roles in the certificate holder's passenger recovery plan (§ 121.415).

b. Check Airman Used in ETOPS. The certificate holder must designate check airmen specifically for ETOPS. The objective of the ETOPS check airman program should be to ensure standardized flight crewmember practices and procedures and also to emphasize the special nature of ETOPS. Only airmen with a demonstrated understanding of the unique requirements of ETOPS should be designated as a check airman.

c. Review of Training Programs and Operating Manuals.

(1) The purpose of the review is to verify the adequacy of information provided to training programs and operating manuals. The FAA will use the information resulting from these reviews as the basis for modification or updating flight crewmember training

programs, operating manuals, and checklists, as necessary.

(2) The FAA will also continually review in-service experience of systems significant to ETOPS. The review includes system reliability levels and individual event circumstances, including crewmember actions taken in response to equipment failures or loss of capabilities.

Chapter 4. Applications to Conduct ETOPS

400. ETOPS Qualifications. The unique nature of ETOPS necessitates an evaluation of these operations to ensure that the certificate holder's proposed programs are effective. The FAA will review the certificate holder's documentation and training programs to validate that they are appropriate for ETOPS. To receive approval to conduct ETOPS the certificate holder must satisfy the following conditions:

a. Airplane. The specified airplane-engine combination listed in the certificate holder's application must have been certificated to the airworthiness standards of transport category airplanes and must be approved for ETOPS. Guidance for airplane ETOPS type design can be found in AC 25.1535–1 and § 121.162.

(1) Two-Engine. Airplane-engine combinations already approved for ETOPS under previous FAA guidance can continue to be used in ETOPS operations under part 121. No re-certification under § 25.1535 is required. Two-engine airplanes with existing type certificates on February 15, 2007, may be approved for up to 180-minutes ETOPS without meeting requirements for fuel system pressure and flow, low fuel alerting, and engine oil tank design contained in § 25.1535.

(2) More than Two Engines. Airplanes with more than two engines that are to be used in ETOPS and are manufactured prior to February 17, 2015, may operate in ETOPS without type design approval under the revised § 25.1535. Airplanes with more than two engines manufactured on or after February 17, 2015, must meet the requirements of ETOPS type design.

b. Flight Operations and Maintenance Requirements. The certificate holder must show compliance with the flight operations requirements discussed in paragraph 303 and the maintenance requirements discussed in paragraph 301.

c. Training Requirements. The certificate holder must show that it has trained its personnel to achieve competency in ETOPS and should show compliance with the flight operations and maintenance training requirements discussed in paragraphs 302 and 304.

d. Before the FAA grants ETOPS operational approval to an applicant for two-engine ETOPS, the certificate holder must be able to demonstrate the ability to achieve and maintain the level of propulsion system reliability that is required for the ETOPS-approved airplane-engine combination to be used (Appendix P to Part 121, section I. Paragraph (a)). The certificate holder must also demonstrate that it can operate the particular airframe and other airplane systems at levels of reliability appropriate for the intended operation. This can be achieved directly by a successful in-service operational history or by successfully validating all the required ETOPS processes according to the Accelerated ETOPS Application Method in Appendix 3 of this AC.

e. An applicant for an initial operating certificate who is applying for ETOPS authority at entry into service under the Accelerated ETOPS Application method must comply with the same requirements for certificate holders outlined in this AC. It should be understood that validation of an applicant with no previous operational experience should be more robust than would be necessary for a certificate holder with operational experience. As is the case for all Accelerated ETOPS approvals, the Director, Flight Standards Service must be satisfied that the applicant can operate to the standards expected of an experienced ETOPS operator from the first day of service.

401. Application for ETOPS Authorization.

a. Any certificate holder wishing to obtain an ETOPS authorization must submit an application with all supporting data to their local CHDO office. This application will be for a specific airplane-engine combination and should address all the regulatory requirements for ETOPS. The certificate holder may follow the guidance found in this AC to complete the application. The application should be submitted at least 60 days prior (6 months for the Accelerated ETOPS method of application) to the proposed start of extended range operation with the specific airplane-engine combination.

b. Two-Engine Airplanes.

(1) Up to 180-Minute ETOPS. An applicant requesting ETOPS up to 180 minutes for two-engine operations may select one of the following two application methods best suited to their proposed operation (See Appendix 3):

(a) In-service experience method, or

(b) Accelerated ETOPS method.

(2) ETOPS beyond 180 Minutes, Up to and Including 240 Minutes. The FAA grants approval for ETOPS beyond 180 minutes only to certificate holders with existing 180-minute ETOPS operating authority for the airplane-engine combination to be operated in the application. There is no minimum in-service time requirement for the 180-minute ETOPS operator requesting ETOPS approval beyond 180 minutes. The determination by the Director, Flight Standards Service to grant ETOPS approval is the same as for all ETOPS authorities.

(3) ETOPS beyond 240 Minutes. This authority is only granted to operators of two-engine airplanes between specific city pairs. The certificate holder must have been operating at 180 minute or greater ETOPS authority for at least 24 consecutive months, of which at least 12 consecutive months must be at 240-minute ETOPS authority with the airplane-engine combination in the application.

c. Passenger-Carrying Airplanes with More than Two Engines. There are no minimum in-service experience criteria for certificate holders requesting ETOPS beyond 180 minutes for operations with more than two engines. Those applicants will request approval under the accelerated ETOPS method.

402. ETOPS Authorities.

a. ETOPS with Two-Engine Airplanes. An applicant for two-engine ETOPS may seek approval for extended operations by seeking one of the following ETOPS approvals best suited to their proposed operations (see Appendix 2):

(1) 75-Minute ETOPS in the Caribbean/Western Atlantic Area or in other areas.

(2) 90-Minute ETOPS in Micronesia.

(3) 120-Minute ETOPS.

(4) 138-Minute ETOPS. Such approvals are granted to current 180-minute ETOPS operators, or as an extension of authority to operators with only 120-minute ETOPS approval.

(5) 180-Minute ETOPS.

(6) 207-Minute ETOPS in the North Pacific Area of Operation.

(7) 240-Minute ETOPS. Approvals are granted at this level based on the particular geographic area applied for with criteria delineated for particular applications.

(8) Beyond 240-Minute ETOPS. Approvals are granted at this level based on particular city pairs.

b. ETOPS with Passenger-Carrying Airplanes having More than Two Engines. Certificate holders applying for ETOPS with passenger-carrying airplanes that have more than two engines will receive ETOPS authority based on the FAA approved maximum time limited airplane system restriction

of the airplane-engine combination listed in their application and the maximum authority requested.

403. ETOPS Authorization Requirements.

a. All certificate holders of airplanes with two engines, and all certificate holders of passenger-carrying airplanes with more than two engines, operating on ETOPS routes must comply with all the operational and process requirements specified in the ETOPS regulations in part 121 and as discussed in this AC.

b. Those certificate holders operating airplanes with more than two engines who choose to follow the recommendations in this AC as a means of compliance with the operating rules, and who, on February 15, 2008, have the authority to operate on specific non-ETOPS routes that under the new definition are classified as ETOPS routes, are not required to re-apply for their specific route authority. However, from February 15, 2008, the certificate holder is required to comply with all the ETOPS flight operational requirements that are described in this AC and must have their ETOPS program and all ETOPS processes approved by their CHDO with concurrence of the Director, Flight Standards Service. The CHDO will amend the certificate holder's OpSpecs when the Director, Flight Standards Service grants a certificate holder approval to conduct operations under § 121.161.

c. All ETOPS certificate holders applying for approvals under this section must provide sufficient information with their application to the Manager, Air Transportation Division, AFS 200, through its CHDO and regional FAA office on the following areas of concern in ETOPS:

(1) ETOPS Area of Operations/ Airplane Performance. The altitudes and airspeeds used in establishing the ETOPS area of operations for each airplane-engine combination must be shown to permit compliance with the terrain and obstruction clearance requirements of §§ 121.191 and 121.193, as applicable. A speed other than the approved single engine speed may be used as the basis for compliance to §§ 121.191 and 121.193, provided fuel consumption is shown not to exceed the critical fuel scenario associated with the applicable ETOPS equal-time point (§ 121.646), and the time limited system requirements of § 121.633 are not exceeded.

(2) Weather Information System. A certificate holder should substantiate that the weather information system that it uses can be relied on to forecast terminal and en route weather with a reasonable degree of accuracy and reliability in the proposed areas of operation. Such factors as staffing, dispatcher, training, sources of weather reports and forecasts, and when possible, a record of forecast reliability, should be evaluated.

(3) Minimum Equipment List. The certificate holder is required to submit its MEL, designed in accordance with the master minimum equipment list (MMEL), appropriate to the requested level of ETOPS. A certificate holder's MEL may be more restrictive than the MMEL, considering the kind of ETOPS proposed and the equipment and service problems unique to the certificate holder. System redundancy levels appropriate to ETOPS should be reflected in the MMEL. Systems considered to have a fundamental influence on flight safety may include, but are not limited to the following:

- Electrical, including battery
- Hydraulic
- Pneumatic
- Flight instrumentation
- Fuel
- Flight control
- Ice protection
- Engine start and ignition
- Propulsion system instruments
- Navigation and communications
- Auxiliary power units
- Air conditioning and pressurization
- Cargo fire suppression
- Emergency equipment
- Any other equipment necessary for ETOPS.

(4) Public Protection. The provisions for public protection have historically been embedded in § 121.97(ii). Current requirements are found in § 121.97(b)(1)(ii). The definition of ''public protection'' has been expanded for certificate holders operating ETOPS beyond 180 minutes, and for operations in the North Polar Area and South Polar Area to include facilities at each airport, or in the immediate area, sufficient to protect the passengers and crew from the elements and to see to their welfare. Due to the nature of these operations and the climatic issues involved during the majority of the year, certificate holders undertaking these operations must ascertain that facilities at an airport, or in the immediate area, are sufficiently robust to protect the passengers and crew from the elements, and to see to their welfare during the time required to transport them towards their destination under the passenger recovery plan discussed in paragraph (5) below.

(5) Passenger Recovery Plan.

(a) A specific passenger recovery plan is required for each ETOPS Alternate Airport used by a certificate holder in ETOPS greater than 180 minutes (OpSpec paragraph B042 (4), ER–OPS En Route Alternate Airports). For operations in the North Polar Area and the South Polar Area a specific passenger recovery plan is required for each designated diversion airport taken from those listed in an operator's operations specifications for this operation (North and South Polar Areas, OpSpec paragraph B055, North Polar Operations [Sic], Polar Operations). For further guidance on passenger recovery plans for these polar diversion airports see paragraph 603(2).

(b) The certificate holder's formal passenger recovery plan should provide a means to validate acceptable levels of infrastructure to provide for an orderly process for the care and well being of the passengers and crewmembers. This infrastructure should include facilities that provide for the physiological needs of the passengers and crewmembers such as continuing safety, food, and shelter. Any list of considerations for the passengers and crewmembers need not be exhaustive. However, in certain cases involving operations in demanding environments, plans may need to be detailed enough to provide for medical care, communications, methods for securing alternative expedited travel, extraction, and other continued travel provisions for the crewmembers and passengers. If the certificate holder proposes to use the airplane capabilities and services as a means to satisfy all or part of the requirements for such a plan, the time-limited capability of appropriate systems should be evaluated and taken into account.

(c) It is generally accepted that any plan that is designed to fully recover the passengers within 48 hours may be viewed as meeting the overall requirement to provide for the care and safety of the passengers and crewmembers. The greatest concern relative to passenger recovery plans is when diversions occur to an airport that is geographically located within an area not normally served by the certificate holder and, more specifically, when the diversion occurs to an en route alternate airport located in a harsh operating environment. A certificate holder with a route system extending over remote areas of the world has a responsibility under the regulations (§ 121.135), to develop a passenger recovery plan in anticipation of the possibility of a diversion to an approved en route alternate airport lying within those remote regions. In these instances, the certificate holder operating on those routes should devise a plan of substance that will outline how it will recover the

passengers, crewmembers, and airplane in the event of such a diversion. This plan should be of sufficient detail to demonstrate that the recovery operation can be readily effected, and that the basic needs of the diverted passengers and crewmembers can be provided for in the interim. The plan should address all of the concerns previously listed with specific emphasis on any issues unique to that particular environment. In some environments provisions for shade from the direct sunlight and cooling may be a concern; while in other environments such as polar and sub polar areas, plans should provide for immediate provisions for shelter from the elements, heating, and clothing. After these immediate concerns are addressed, the plan should address provisions for initiating extraction procedures immediately. In all cases a particular alternate airport environment should drive the requirements of the passenger recovery plan and the prioritization of concerns needing to be addressed.

(6) Navigation. The applicant must show the availability of navigation facilities adequate for the operation, taking into account the navigation equipment installed on the airplane, the navigation accuracy required for the planned route and altitude of flight, and the routes and altitudes to the airports designated as ETOPS alternates. Navigation facilities required to ensure a safe approach and landing must be available.

Note: Non-terrestrial approaches, e.g., GPS/RNAV, may be utilized if approved in a certificate holder's operating specifications at airports where terrestrial navigation aids, such as NDB or VOR, are not available or operational.

(7) Communications. The certificate holder must show the availability of communications services and facilities for communication with ATC and the dispatch office. Certificate holders operating ETOPS routes must use the most reliable voice-based communications technology available for communications between the flight crew and air traffic services, and the flight crew and the certificate holder per § 121.99. For ETOPS routes further than 180 minutes from adequate airports, a second communication system is required and must be able to provide immediate satellite-based voice communications of landline-telephone fidelity. Rapid and reliable ATC communications are determined by the facilities operated by ATC units in the areas of operations.

404. Validation Flight(s).

Prior to granting ETOPS approval to a certificate holder for operation of a specific airplane-engine combination in an authorized area of operation, the FAA will require actual validation flights on proposed routes that the certificate holder intends to operate within the ETOPS area of operations, designated in the operator's approval request. This is to ensure that the ETOPS flight operations and maintenance programs described in Chapter 3 are capable of supporting those operations. Depending on the certificate holder's level of experience in conducting ETOPS and the routes intended to be used in operations, the FAA will determine the number of validation flights required, the manner in which validation flights may be conducted (revenue with passengers, non-revenue, or cargo only), and any other items requiring validation. If approval is granted to fly the validation flight in revenue service, the operator should be granted appropriate, though temporary or restricted, OpSpecs covering the necessary flight(s). At the successful conclusion of the validation, the CHDO should coordinate with the Director, Flight Standards, amendment and issuance of unrestricted OpSpecs. Certificate holders operating passenger-carrying airplanes with more than two engines who, on the effective date of this AC, have the authority to operate on specific non-ETOPS routes that under the new definition are classified as ETOPS routes, may not be required to conduct an actual validation flight. If the certificate holder can adequately validate that the necessary additional ETOPS processes and procedures are in place, and that they can function appropriately, may be validated by another means satisfactory to the CHDO with concurrence of Director, Flight Standards Service.

405. Required Demonstration on a Validation Flight.

a. The certificate holder should demonstrate, by means of an FAA-witnessed validation flight or flights using the specified airplane-engine combination in its application, that it has the competence and capability to safely conduct and adequately support the intended operation. The CHDO, with the concurrence of the Director, Flight Standards Service, will determine the conditions for each certificate holder's validation flights. This determination will be made on a case-by-case basis following a review of the certificate holder's experience and the proposed operation. This process may require the certificate holder to conduct an actual diversion during the validation flights.

b. The following emergency conditions should be demonstrated during the ETOPS validation flights, unless successful demonstration of these conditions has been approved and subsequently witnessed by the FAA in an acceptable simulation prior to the validation flight:

(1) Total loss of thrust of one engine and total loss of engine-generated electrical power, or

(2) Any other condition considered more critical in terms of airworthiness, crewmember workload, or performance risk.

c. This simulator demonstration does not alter the certificate holder's requirement to demonstrate the competence and the capability to adequately support the intended operation during the ETOPS validation flight.

Chapter 5. FAA ETOPS Approval

500. Final ETOPS Operating Authority.

Following completion of the ETOPS application requirements and before the issuance of operations specifications, the certificate holder's application with supporting data, together with the CHDO's recommendations, should be forwarded through the certificate holder's regional FAA office, to AFS–200 (Washington Headquarters) for review and concurrence. The CHDO's recommendations should include any specific recommendations made by the principal maintenance inspector (PMI), principal avionics inspector (PAI), and principal operations inspector (POI), as appropriate. Following review and concurrence by AFS–200, the validation flights should be conducted in accordance with any additional guidance or recommendations specified in the review and concurrence process. Following the successful completion of the validation flights, the Director, Flight Standards Service, will authorize the CHDO to issue the certificate holder OpSpecs for ETOPS operations.

501. ETOPS OpSpecs.

Those OpSpecs for ETOPS provide authorizations and limitations covering at least the following:

a. Approved airplane-engine combinations,

b. Current approved CMP standard required for ETOPS, if appropriate,

c. Authorized geographic area(s) of operation,

d. ETOPS area of operation,

e. Airports authorized for use, including alternates and associated instrument approaches and operating minima,

f. Approved maintenance and reliability program for ETOPS including those items specified in the type design

approved CMP standard, if appropriate, and

g. Identification of the airplanes authorized for ETOPS by make, model, serial, and registration number.

502. Changes to Approved ETOPS Operations, Maintenance and Training Procedures.

Following final ETOPS approval, if a certificate holder determines a need to make substantial changes to its ETOPS operations, maintenance and training procedures, it should submit such changes in a timely manner to the CHDO for review and acceptance before incorporation. The certificate holder and its CHDO should negotiate what constitutes a substantial change to allow flexibility and take into consideration a certificate holder's ETOPS experience. What is considered substantial for a new entrant ETOPS certificate holder may be considerably different than for a certificate holder with many years of ETOPS experience.

503. Processes After Receiving ETOPS Authority.

a. The FAA continuously monitors the world fleet average IFSD rate for two-engine ETOPS authorized airplane-engine combinations to ensure that the levels of reliability achieved in ETOPS remain at the required levels. If an acceptable level of reliability in fleet average IFSD is not maintained, or if significant deficiencies or adverse trends are detected in type design (i.e., basic design of the airplane-engine) or in the operation, the FAA may require the airframe and engine manufacturers to develop a plan acceptable to the FAA to address the deficiencies.

b. As with all other operations, the CHDO will monitor all aspects of the ETOPS operations it has authorized to the certificate holder to ensure that the levels of reliability achieved in ETOPS operations remain at acceptable levels, and that the operation continues to be conducted safely.

c. In the event that an acceptable level of reliability is not maintained, if significant adverse trends exist, or critical deficiencies are detected in the type design or in the conduct of ETOPS operations, the CHDO will:

(1) Alert the appropriate airplane certification office and the airplane evaluation group, when problems associated with airplane design or operations are identified; and

(2) Initiate a special evaluation, impose operational restrictions (if necessary), and ensure that the certificate holder adopts corrective actions to resolve the problems in a timely manner.

Chapter 6. Polar Operations

600. Background.

a. In February 2001, in response to several U.S. carriers' plans to conduct north polar operations, the FAA developed a ''Polar Policy Letter.'' This policy letter documented the requirement for airlines to develop necessary plans in preparation for north polar flights and identified the necessary equipment and airplane configuration requirements for all airplanes regardless of the number of engines. The FAA's intent in issuing the policy letter was to ''establish a process that can be applied uniformly to all applicants for polar route authority.'' This policy was applied to all operators, and although not ETOPS per se, it required ETOPS-like planning, equipage and operational requirements in these areas.

b. During the development of the expanded ETOPS regulations the ARAC recommended that the guidance contained in the Polar Policy letter be incorporated in the ETOPS regulations. It also recommended that these requirements be expanded to the South Polar Region. Although no U.S. certificate holders were operating in the South Polar Area at the time, it was felt that due to similar extremes in remoteness, weather, and terrain, this area should be included in anticipation of future industry growth.

c. The FAA agreed with the recommendations of the ARAC and has determined that operating in the polar areas presents operational issues similar to typical ETOPS flights, and as such, the risks associated with this operation can be mitigated by applying planning, operational, and equipage requirements similar to ETOPS and specific procedures applicable to the risks associated with this type of flying.

601. Definition.

The North Polar Area is defined as the entire area north of latitude 78 degrees North, and the South Polar Area is defined as the entire area south of latitude 60 degrees South.

602. Applicability.

Any certificate holder operating an airplane whose route contains any point within the North Polar area or South Polar area as defined in paragraph 601 above, must comply with the requirements of part 121, appendix P, section III. The certificate holder must first determine during the route planning stage if the operation will be ETOPS as defined in § 121.161 and as further discussed in Chapter 2, paragraph 201 of this AC. If the operation is ETOPS the polar requirements of part 121, appendix P and the guidance in this chapter are in addition to any of the applicable ETOPS requirements discussed in Chapter 3, paragraphs 300–304 of this AC.

603. Polar Requirements.

a. The certificate holder applying for authority to fly in the Polar Areas must develop plans in preparation for all polar flights in the North and South Polar Areas. This section documents the added requirements and identifies equipment and airplane configuration requirements in addition to the requirements discussed in Chapter 3, paragraphs 300–304.

b. The certificate holder's plan for conducting operations within these areas must include the following elements:

(1) Requirements for Designating Alternates. Certificate holders should designate a set of alternate airports regardless of their distance from the planned route, such that one or more can reasonably be expected to be available in a variety of weather conditions to support a necessary diversion. The flight must have sufficient fuel as required by § 121.646, if applicable, and should be able to make a safe landing and the airplane maneuvered off of the runway at the selected diversion airport. In the event of a disabled airplane following landing, the capability to move the disabled airplane should exist at that airport, so as not to block the operation of any recovery airplane. In addition, those airports designated for use should be capable of protecting the safety of all personnel by being able to:

(a) Offload the passengers and crewmember in a safe manner during adverse weather conditions;

(b) Provide for the physiological needs of the passengers and crewmembers for the duration of the stay at the diversion airport until safe evacuation; and

(c) Safely extract passengers and crewmembers as soon as possible (execution and completion of the passenger recovery is expected as soon as possible within 48 hours following diversion).

(2) Passenger Recovery Plan. Except for supplemental all-cargo operations, each certificate holder conducting operations in the polar areas must have a passenger recovery plan at designated diversion airports as discussed in paragraph (1) above and in Chapter 4, paragraph 403c(5). The passenger recovery plan in these Polar Regions should also include special consideration for the possibility of extreme cold weather, limited passenger facilities, and the need to initiate passenger recovery without delay.

(3) Fuel Freeze Strategy and Monitoring. The certificate holder must have a fuel-freeze strategy and procedures for monitoring fuel freezing. The certificate holder may wish to develop a fuel freeze strategy and monitoring program (e.g., alternate fuel freeze point temperature determination based on actual measurements of uploaded fuel), in lieu of using the standard minimum fuel freeze temperatures for specific types of fuel used. In such cases, the certificate holder's fuel freeze analysis and monitoring program for the airplane fuel load is subject to FAA approval. The certificate holder should have procedures established that require coordination between maintenance, dispatch, and assigned flight crewmembers to convey the determined fuel freeze temperature of the fuel load on board the airplane.

(4) Communication Capability. The certificate holder must have effective voice communications and/or data link capability for all portions of the flight route. The requirements of § 121.99 apply to all ETOPS operations in these areas. For all other operations, company communications may be accomplished using HF voice, HF data link, satellite communication (SATCOM) voice or SATCOM data link. Because of the limitations of VHF and satellite-based voice communications, ATC communications will probably require high frequency (HF) voice over portions of these routes. The FAA recognizes that SATCOM may not be available for short periods during flight over the Poles. Communication capability with HF radios also may be affected during periods of solar flare activity. The certificate holder should consider predicted solar flare activity and its effect on communications for each flight that is dispatched for operations into these areas.

(5) MEL Considerations. The certificate holder must amend its MEL to reflect the items that must be operational for these operations. For ETOPS flights, all MEL restrictions for the applicable ETOPS operations apply. Before receiving FAA authority to conduct these operations, all certificate holders should review its MEL for consideration of the dispatch availability of the following systems/equipment:

(a) Fuel quantity indicating system (FQIS), including the fuel tank temperature indicating system;

(b) APU (when the APU is necessary for an airplane to comply with ETOPS requirements), including electrical and pneumatic supply to its designed capability,

(c) Autothrottle system;

(d) Communication systems relied on by the flight crewmember to satisfy the requirement for communication capability; and

(e) Except for all-cargo operations, an expanded medical kit to include automated external defibrillators (AED).

(6) Training. The certificate holder should address the following training requirements in its approved training programs:

(a) QFE/QNH and meter/feet conversions (required for flight crewmember and dispatcher training);

(b) Training requirements for fuel freeze, to include maintenance, dispatch, and flight crewmember training (special curriculum segments);

(c) General route-specific training on weather patterns;

(d) Relevant airplane system limitations (for example fuel temperature limits);

(e) Role of maintenance role in providing airplane systems capability information to dispatch and flight crewmember to aid the PIC in diversion decision making;

(f) Crewmember training in the use of the cold weather anti-exposure suit,

(g) For dispatch and crewmember considerations during solar flare activity, the certificate holder must be aware of the content of AC 120–52, Radiation Exposure of Certificate Holder Crewmembers, and provide crewmember training as stated in AC 120–61, Crewmember Training on In-Flight Radiation Exposure; and

(h) Training for flight crewmembers and dispatcher roles in the certificate holder's passenger recovery plan.

(7) Crew Exposure to Radiation during Solar Flare Activity. The certificate holder must provide a plan for mitigating crew exposure to the effects of solar flare activity at the altitudes and latitudes expected in such operations.

(8) Special Equipment for Polar Operations. A minimum of two cold weather anti-exposure suits must be on board each airplane, so that outside coordination at a diversion airport with extreme climatic conditions can be accomplished safely. A short term MEL relief for this item may be granted provided the certificate holder has arranged ground support provisions for providing such protective clothing at alternate airports. The FAA may also relieve the certificate holder from this requirement during those periods of the year when the seasonal temperature makes the equipment unnecessary.

604. Validation before Approval.

a. Prior to receiving an authorization to conduct polar operations a certificate holder must conduct an FAA observed validation flight. As part of polar area validation, the certificate holder must exercise its passenger recovery plan. Adequate and timely notification must be made to the FAA before the validation flight so that any necessary coordination between the FAA inspector and personnel at the selected diversion airport can be completed. The inspector will witness the effectiveness and adequacy of the following areas of operation:

(1) Communications,

(2) Coordination,

(3) Facilities,

(4) Accuracy of Notices to Airman and weather information, and

(5) Operability of ground equipment during the simulated diversion.

b. The exercise of the certificate holder's passenger recovery plan may be completed before the validation flight. The FAA will not consider a request by a certificate holder to conduct the validation flight in a passenger revenue status if the certificate holder's passenger recovery plan has not been previously and satisfactorily demonstrated to the FAA. If the certificate holder elects to demonstrate its passenger recovery plan as part of and during its validation flight, the flight may not be conducted in a passenger revenue status. However, the carriage of cargo revenue is permissible in this case and is encouraged for airplane weight and balance purposes.

605. FAA Polar Area Approval.

Certificate holders must obtain FAA approval to conduct these operations and to operate in any area of magnetic unreliability. The FAA will grant such authority based on a specific airplane-engine combination. Any certificate holder wishing to obtain Polar authorization must submit an application with all supporting data to their local CHDO office. This application must address all the regulatory requirements for Polar operations and may follow the guidance as found in this AC. The application should be submitted at least 60 days prior to the proposed start of polar operations with the specific airplane-engine combination. FAA approval is granted by an amendment to the certificate holder's OpSpecs.

Appendix 1. Definitions

The following definitions are applicable to ETOPS. They include definitions from Title 14 of the Code of Federal Regulations (14 CFR) parts 1 and 121, as well as terms that are used within the context of this AC with respect to ETOPS:

1. Adequate Airport. An airport that an airplane operator may list with approval from the FAA because that airport meets the landing limitations of part 121, § 121.197 and

is either, an airport that meets the requirements of 14 CFR part 139, subpart D, excluding those that apply to aircraft rescue and firefighting service, or a military airport that is active and operational. Airports without specific part 139 approval (*i.e.*, outside FAA jurisdiction), may be considered adequate provided that they are determined to meet the equivalent standards and intent of part 139 subpart D.

2. Configuration, Maintenance, and Procedures (CMP) Document. A document approved by the FAA that contains minimum configuration, operating, and maintenance requirements, hardware life-limits, and Master Minimum Equipment List (MMEL) constraints necessary for an airplane-engine combination to meet ETOPS type design approval requirements.

3. Dual Maintenance. Dual maintenance means maintenance on the ''same'' ETOPS significant system. Dual maintenance is maintenance action performed on the same element of identical, but separate ETOPS Significant Systems during a scheduled or unscheduled maintenance visit. Dual maintenance on ''substantially similar'' ETOPS significant systems means maintenance actions performed on engine-driven components on both engines during the same maintenance visit.

4. Equal-Time Point (ETP). A point on the route of flight where the flight time, considering wind, to each of two selected airports is equal.

5. ER. An abbreviation used in the MMEL and in the minimum equipment list (MEL) of some certificate holders to indicate ETOPS. As used in this AC, any ETOPS MMEL/MEL restrictions applicable to ETOPS.

6. ETOPS Alternate Airport. An adequate airport listed in the certificate holder's operations specifications (OpSpecs) that is designated in a dispatch or flight release for use in the event of a diversion during ETOPS. This definition applies to flight planning and does not in any way limit the authority of the pilot in command during flight.

7. ETOPS Area of Operation. For turbine-engine-powered airplanes with two engines an area beyond 60 minutes from an adequate airport, or with more than two engines in passenger-carrying operations, an area beyond 180 minutes from an adequate airport, and within the authorized ETOPS maximum diversion time approved for the operation being conducted. An ETOPS area of operation is calculated at an approved one-engine inoperative cruise speed under standard conditions in still air.

8. ETOPS Entry Point. The first point on the route of an ETOPS flight; determined using a one-engine-inoperative cruise speed under standard conditions in still air that is more than 60 minutes from an adequate airport for airplanes with two engines, and more than 180 minutes from an adequate airport for passenger-carrying airplanes with more than two engines.

9. ETOPS Significant System. An airplane system, including the propulsion system, the failure or malfunctioning of which could adversely affect the safety of an ETOPS flight, or the continued safe flight and landing of an airplane during an ETOPS diversion. Each ETOPS significant system is either an ETOPS group 1 significant system or an ETOPS group 2 significant system.

a. An ETOPS group 1 Significant System:

(1) Has fail-safe characteristics directly linked to the degree of redundancy provided by the number of engines on the airplane;

(2) Is a system, the failure or malfunction of which could result in an in-flight shutdown (IFSD), loss of thrust control, or other power loss;

(3) Contributes significantly to the safety of an ETOPS diversion by providing additional redundancy for any system power source lost as a result of an inoperative engine; and

(4) Is essential for prolonged operation of an airplane at engine inoperative altitudes.

b. An ETOPS group 2 significant system is an ETOPS significant system that is not an ETOPS group 1 significant system.

10. ETOPS-Qualified Personnel. A person performing maintenance for the certificate holder, who has satisfactorily completed the certificate holder's ETOPS training program.

11. Extended Operations (ETOPS). An airplane flight operation during which a portion of the flight is conducted beyond 60 minutes from an adequate airport for turbine-engine-powered airplanes with two engines, and beyond 180 minutes for turbine-engine-powered passenger-carrying airplanes with more than two engines. This distance is determined using an approved one-engine-inoperative cruise speed under standard atmospheric conditions in still air.

12. Flight-by-Flight Exception. The application of a greater ETOPS maximum diversion authority under specific, limited circumstances, as defined in this AC, when a flight cannot be planned on the preferred route within an authorized lesser diversion time.

13. In-Flight Shutdown (IFSD). For ETOPS only, when an engine ceases to function (when the airplane is airborne) and is shut down, whether self induced, flight crew initiated or caused by an external influence. The FAA considers IFSD for all causes, such as flameout, internal failure, flight crew initiated shutdown, foreign object ingestion, icing, inability to obtain or control desired thrust or power, and cycling of the start control; however briefly, even if the engine operates normally for the remainder of the flight. This definition excludes the airborne cessation of the functioning of an engine when immediately followed by an automatic engine relight and when an engine does not achieve desired thrust or power but is not shut down.

14. Maximum Diversion Time. For the purposes of ETOPS in § 121.161 and related ETOPS regulations, maximum diversion time (for example 120 minutes, 180 minutes, 240 minutes, and, beyond 240 minutes) is the longest diversion time authorized for a flight under the operator's ETOPS authority. It is calculated under standard conditions in still air at a one-engine-inoperative cruise speed.

15. One-Engine-Inoperative Cruise Speed. For the purposes of those sections of part 121 applicable to ETOPS, the one-engine-inoperative cruise speed is a speed within the certified operating limits of the airplane that is specified by the certificate holder and approved by the FAA for calculating required fuel reserves needed to account for an inoperative engine, or determining whether an ETOPS alternate is within the maximum diversion time authorized for an ETOPS flight.

Note: The following areas (16–18) are defined for the purposes of those sections of part 121 applicable to ETOPS:

16. North Pacific (NOPAC). The North Pacific Air Traffic Service (ATS) routes and adjacent airspace between Anchorage and Tokyo Flight Information Regions (FIR).

17. North Pacific Area of Operations. Pacific Ocean areas north of 40° North latitudes including NOPAC ATS routes, and published Pacific Organized Track System (PACOTS) tracks between Japan and North America. (For the purposes of this definition, ''North America'' includes the countries of Canada, the United States, and Mexico.)

18. Polar Areas.

a. North Polar Area. The entire area north of 78° North latitude.

b. South Polar Area. The entire area south of 60° South latitude.

19. Process. A series of steps or activities that are accomplished in a consistent manner to ensure a desired result is attained on an ongoing basis.

20. Proven Process. A process is considered to be proven when the following elements are developed and implemented:

a. Definition and documentation of process elements.

b. Definition of process related roles and responsibilities.

c. Procedures for validation of process or process elements to include:

- Indications of process stability/reliability.
- Parameters to validate process and monitor (measure) success.
- Duration of necessary evaluation to validate process.

d. Procedure for follow-up in-service monitoring to assure the process remains reliable and stable.

APPENDIX 2. ETOPS APPROVALS

As described in Section 401 of this AC, Appendix P to § Part 121 permits certificate holders to seek various levels of ETOPS approvals. This Appendix summarizes the details for each approval level, and is intended to provide further guidance to the requirements in Appendix P to Part 121.

1. Airplanes with Two Engines

Approval Level	Area of Applicability	Requirements	How to apply	Comments
75 min	Caribbean / Western Atlantic Area.	**1.** The airplane-engine combination need not be type design approved for ETOPS. **2.** The FAA reviews the airframe-engine combination to ensure the absence of factors that could prevent safe operations. **3.** The airframe-engine combination must have sufficient favorable experience to demonstrate to the Administrator a level of reliability appropriate for 75-minute ETOPS. **4.** Even though there is no requirement for the type design approval of the airplane, the certificate holder must ensure the airplane has systems that are capable of complying with the requirements of § 121.633 for time-limited system planning. **5.** The certificate holder must comply with the maintenance program requirements of § 121.374, except that a pre-departure service check before departure of the return flight is not required. Guidance is provided in Chapter 3, paragraphs 301 and 302 of this AC. **6.** The certificate holder must comply with the flight operational requirement in part 121, as described in Chapter 3, paragraphs 303 and 304 of this AC. **7.** The certificate holder need not comply with 120 minute ETOPS provisions of the MMEL. **8.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.	Request made to the FAA for route authority. The application will show the need for such an authority. Minimal or no in-service experience with the airplane-engine combination is required (see Appendix 3).	This area is considered a "benign" area of operations due to (1) numerous airports, (2) a high level of reliability and availability are required of communications, navigation, and ATC services and facilities, and (3) prevailing weather conditions that are stable and generally do not approach extremes in temperature, wind, ceiling, and visibility.
75 min	Other areas besides Caribbean / Western	**1.** The airplane-engine combination need not be type design approved for ETOPS. **2.** The FAA reviews the airframe-engine combination to ensure the absence of factors that could prevent safe operations.	Request made to the FAA for route authority. The application will	Areas not considered benign such as North Atlantic

Approval Level	Area of Applicability	Requirements	How to apply	Comments
	Atlantic Area operations.	**3.** The airframe-engine combination must have sufficient favorable experience to demonstrate to the Administrator a level of reliability appropriate for 75-minute ETOPS. **4.** Even though there is no specific requirement for type design approval of the airplane, the certificate holder must ensure the airplane has systems that are capable of complying with the requirements of § 121.633 for time-limited system planning. **5.** The certificate holder must comply with the maintenance program requirements of § 121.374. Guidance is provided in Chapter 3, paragraphs 301 and 302 of this AC. **6.** The certificate holder must comply with the flight operational requirements in part 121, as described in Chapter 3, paragraphs 303 and 304 of this AC. **7.** The certificate holder must comply with 120-min ETOPS provisions in the MMEL. **8.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.	show the need for such an authority.	(NAT/NMPS) area. Minimal or no in-service experience with the airplane-engine combination is required (see Appendix 3).
90 min	Micronesia	**1.** The airplane-engine combination must be type design approved for 120 min ETOPS or greater. **2.** The certificate holder must comply with the maintenance program requirements of § 121.374, except that a pre-departure service check before departure of the return flight is not required. Guidance is provided in Chapter 3, paragraph 301 and 302 of this AC. **3.** The certificate holder must comply with the flight operational requirement in part 121, as described in chapter 3, paragraphs 303 and 304 of this AC. **4.** The certificate holder must comply with 120-min ETOPS provisions in the MMEL. **5.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.	Request made to the FAA for route authority. The application will show the need for such an authority.	Minimal or no in-service experience with the airplane-engine combination is required (see Appendix 3).
120 min	Unlimited (no area restriction)	**1.** The airplane-engine combination must be ETOPS type design approved for 120-minute or greater. **2.** The certificate holder must comply with all part 121 flight operations and maintenance requirements pertaining to ETOPS as discussed in	Chapter 4, paragraph 401(b) of this AC provides the two	

Approval Level	Area of Applicability	Requirements	How to apply	Comments
		Chapter 3 of this AC. **3.** The certificate holder must comply with 120-min ETOPS provisions in the MMEL. **4.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.	methods for gaining approval.	
138 min (for certificate holders who are currently approved for 120-min ETOPS)	Unlimited (no area restriction)	**1.** The airplane-engine combination must be ETOPS type design approved for 120-minute or greater. If approved only up to 120 min, the FAA must ensure the airplane time-limited systems support operations up to 138 min in accordance with § 121.633. **2.** Comply with all part 121 flight operations and maintenance requirements pertaining to ETOPS as discussed in Chapter 3 of this AC. The certificate holder must conduct training for maintenance, dispatch and flight crew. Training should include any unique aspects of 138 min operations e.g., any additional requirement imposed by the FAA including MEL requirements. **3.** Must comply with the "beyond 120-minute ETOPS provisions in the MMEL. If a 180-minute ETOPS MMEL does not exist for the airplane, the certificate holder must apply to the FAA for any additional items that may be applicable for 138-min operations. **4.** 138-min ETOPS authority is used when the route cannot be efficiently operated under 120-min ETOPS. **5.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.	Certificate holder with 120-min ETOPS authority may apply to the FAA. The application will show the need for such an authority. A modified MEL to support operations should be submitted with the application to AFS-200 through the certificates CHDO.	This is an extension of previous 120-minute authority. Approval is granted for operations up to 138 minutes on a flight-by-flight exception basis.
138 min (for certificate holders who are currently approved for 180-min ETOPS)	Unlimited (no area restriction)	**1.** Airplane-engine combination must be ETOPS type design approved for 180 minutes or greater. **2.** Comply with all part 121 flight operations and maintenance requirements pertaining to ETOPS as discussed in Chapter 3 of this AC. **3.** Must comply with the 180 minute ETOPS provisions in the MMEL. **4.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications. **5.** The certificate holder must conduct training for maintenance, dispatch and flight crew regarding the differences between 138-minute and 180-minute diversion authority.	Certificate holder with 180-min ETOPS authority may apply to the FAA. The application will show the need for such an authority.	Since this authority is less than the certificate holder's maximum ETOPS authority, it may be exercised on an unlimited basis.

Approval Level	Area of Applicability	Requirements	How to apply	Comments
180 min	Unlimited (no area restriction)	**1.** Airplane-engine combination must be ETOPS type design approved for 180-minute or greater. **2.** Comply with all part 121 flight operations and maintenance requirements pertaining to ETOPS as discussed in Chapter 3 of this AC. **3.** Must comply with the 180-minute ETOPS provisions in the MMEL. **4.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.	Chapter 4, paragraph 401(b) of this AC provides the methods for gaining approval to operate under 180 min	
207 min	In North Pacific Area of Operations (Pacific Ocean areas north of 40N latitudes including NOPAC ATS routes and published PACOTS tracks between Japan and North America). The subcontinent of North America includes Canada, Mexico and the United States.	**1.** Airplane-engine combination must be ETOPS type design approved for 180-minute or more. The certificate holder must comply with § 121.633(a), however, the approved time for the airplane's most limiting ETOPS significant system and most limiting cargo-fire suppression time must be at least 222 minutes. **2.** Certificate holder must have existing 180-minute ETOPS operating authority for the airplane-engine combination to be operated. **3.** The certificate holder must have previous ETOPS experience satisfactory to the Administrator. **4.** The certificate holder must make every effort to plan ETOPS within 180 minutes or less, if possible. **5.** The certificate holder must inform the flight crew each time an airplane is proposed for dispatch for greater than 180 minutes and tell them why the route was selected. **6.** In addition to the equipment specified in the certificate holder's minimum equipment list for 180-minute ETOPS, the following systems must be operational for dispatch: **(A)** The fuel quantity indicating system, **(B)** The APU (including electrical and pneumatic supply and operating to the APU's designed capability) when the APU is necessary for an airplane to comply with ETOPS requirements, **(C)** The auto throttle system, **(D)** The communication system required by § 121.99(d) or § 121.122(c), as applicable, and **(E)** One-engine-inoperative auto-land capability, if flight planning is predicated on its use.	Those certificate holders that have 180-minute ETOPS authority in this area can apply to the FAA for approval as an extension to their 180-minute authority.	This is an extension of 180-minute ETOPS authority for the specific case of operations in the North Pacific Area of Operations.

Approval Level	Area of Applicability	Requirements	How to apply	Comments
		7. Comply with all part 121 flight operations and maintenance requirements pertaining to ETOPS as discussed in Chapter 3 of this AC. **8.** The nearest available ETOPS alternate within 207 minutes diversion time must be specified in the dispatch or flight release. **9.** In conducting such a flight the certificate holder must consider Air Traffic Service's preferred track. **10.** This exception may be used only on a flight-by-flight basis when an ETOPS alternate is not available within 180 minutes for reasons such as political or military concerns; volcanic activity; temporary airport conditions; and airport weather below dispatch requirements or other weather related events. **11.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications. **12.** The certificate holder must track how many times 207-minute authority is used.		
240 min	North Polar Area, in the area north of the NOPAC, and in the Pacific Ocean north of the equator	**1.** Airplane-engine combination must be ETOPS type design approved for greater than 180-minutes. The certificate holder must ensure the airplane has systems that are capable of complying with the requirements of § 121.633(b) for time-limited system planning. **2.** Certificate holder must have existing 180-minute ETOPS operating authority for the airplane-engine combination to be operated. **3.** The certificate holder must have previous ETOPS experience satisfactory to the Administrator. **4.** The certificate holder must make every effort to plan ETOPS with 180 minutes or less, if possible. **5.** The certificate holder must inform the flight crew each time an airplane is proposed for dispatch for greater than 180 minutes and tell them why the route was selected. **6.** In addition to the equipment specified in the certificate holder's minimum equipment list for 180-minute ETOPS, the following systems must be operational for dispatch: **(A)** The fuel quantity indicating system, **(B)** The APU (including electrical and pneumatic supply and operating to the APU's designed capability) when the APU is necessary for an airplane to comply with ETOPS requirements,	Those certificate holders that have 180-minute ETOPS authority in this area can apply to the FAA for approval as an extension to their 180-minute authority.	This is an extension of 180-minute ETOPS in this area and is to be used on a flight by flight exception basis when an ETOPS alternate is not available within 180 minutes.

Approval Level	Area of Applicability	Requirements	How to apply	Comments
		(C) The auto throttle system, **(D)** The communication system required by § 121.99(d) or § 121.122(c), as applicable, and **(E)** One-engine-inoperative auto-land capability, if flight planning is predicated on its use. **7.** Comply with all part 121 flight operations and maintenance requirements pertaining to ETOPS as provided in Chapter 3 of this AC. **8.** The nearest available ETOPS alternate within 240 minutes diversion time must be specified in the dispatch or flight release. **9.** In conducting such a flight the certificate holder must consider Air Traffic Service's preferred track. **10.** The criteria used by the certificate holder to decide that extreme weather precludes using an airport must be established by the certificate holder, accepted by the FAA, and published in the certificate holder's manual for the use of dispatchers and pilots. **11.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications. **12.** This exception may be used in the North Polar Area and in the area north of NOPAC only in extreme conditions particular to these areas such as volcanic activity, extreme cold weather at en route airports, airport weather below dispatch requirements, temporary airport conditions, and other weather related events. This exception may be used in the Pacific Ocean area north of the equator only for reasons, such as political or military concern, volcanic activity, airport weather below dispatch requirements, temporary airport conditions and other weather related events.		

Approval Level	Area of Applicability	Requirements	How to apply	Comments
240 min	Areas south of the equator: **1.** Pacific Ocean areas between the US West coast and Australia, New Zealand and Polynesia, **2.** South Atlantic Oceanic areas, **3.** Indian Ocean areas **4.** Oceanic areas between Australia and South America	**1.** Airplane-engine combination must be ETOPS type design approved for greater than 180-minute. The certificate holder must ensure the airplane has systems that are capable of complying with the requirements of § 121.633 (b) for time-limited system planning. **2.** Certificate holder must have existing 180-minute ETOPS operating authority for the airplane-engine combination to be operated. **3.** The certificate holder must have previous ETOPS experience satisfactory to the Administrator. **4.** In addition to the equipment specified in the certificate holder's minimum equipment list for 180-minute ETOPS, the following systems must be operational for dispatch: **(A)** The fuel quantity indicating system, **(B)** The APU (including electrical and pneumatic supply and operating to the APU's designed capability) when the APU is necessary for an airplane to comply with ETOPS requirements, **(C)** The auto throttle system, **(D)** The communication system required by § 121.99(d) or § 121.122(c), as applicable, and **(E)** One-engine-inoperative auto-land capability, if flight planning is predicated on its use. **5.** Comply with all part 121 flight operations and maintenance requirements pertaining to ETOPS as provided in Chapter 3 of this AC. **6.** The nearest available ETOPS alternate within 240 minutes diversion time must be specified in the dispatch or flight release. **7.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.	Request made to the FAA for route authority. The application will show the need for such an authority.	This is an unlimited authority
Beyond 240 min	Specific city pairs in the following areas as designated in the operators application:	**1.** Airplane-engine combination must be ETOPS type design approved for greater than 180-minute. The certificate holder must ensure the airplane has systems that are capable of complying with the requirements of § 121.633 (b) for time-limited system planning. **2.** The certificate holder must have existing 180-minute ETOPS operating authority for the airplane-engine combination to be operated. **3.** The certificate holder must have previous ETOPS experience satisfactory to the Administrator. **4.** The operator must have been operating at 180-minute or greater ETOPS	Request made to the FAA for route authority. The application will show the need for such an authority.	There is no time limit to this authority.

Approval Level	Area of Applicability	Requirements	How to apply	Comments
	1. Pacific Ocean areas between the US West coast and Australia, New Zealand and Polynesia, **2.** South Atlantic Oceanic areas, **3.** Indian Ocean areas **4.** Oceanic areas between Australia and South America **5.** South Polar Area	authority for at least 24 consecutive months, of which at least 12 consecutive months must have been under 240-minute ETOPS authority with the airplane-engine combination to be used. **5.** In addition to the equipment specified in the certificate holder's minimum equipment list for 180-minute ETOPS, the following systems must be operational for dispatch: **(A)** The fuel quantity indicating system, **(B)** The APU (including electrical and pneumatic supply and operating to the APU's designed capability) when the APU is necessary for an airplane to comply with ETOPS requirements, **(C)** The auto throttle system, **(D)** The communication system required by § 121.99(d) or § 121.122(c), as applicable, and **(E)** One-engine-inoperative auto-land capability, if flight planning is predicated on its use. **6.** The certificate holder must comply with all part 121 flight operations and maintenance pertaining to ETOPS as provided in Chapter 3 of this AC. **7.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.		

2. Passenger-carrying Airplanes with more than Two Engines.

Approval Level	Area of Applicability	Requirements	How to apply	Comments
Beyond 180 min	Unlimited area of the world	**1.** The airplane-engine combination must be type-design-approved for ETOPS, except as provided in § 121.162(see comments). **2.** The certificate holder must ensure the airplane has systems that are capable of complying with the requirements of §121.633 for time-limited system planning. **3.** The operator must designate the nearest available ETOPS alternate or alternates within 240 minutes diversion time (at one engine inoperative cruise speed under standard conditions in still air). If an ETOPS alternate is not available within 240 minutes, the operator must designate the nearest available ETOPS alternate or alternates along the planned route of flight. **4.** The minimum equipment list (MEL) limitations for the authorized ETOPS diversion time apply. **(i)** The Fuel Quantity Indicating System must be operational. **(ii)** The communications systems required by §121.99(d) or §121.122(c) must be operational, except for three and four-engine airplanes operating 180 minutes or less from an alternate in the North Polar and South Polar areas. **5.** The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.	Request made to the FAA for route authority. The application will show the need for such an authority. Certificate holders who have authority to operate on specific routes that under this AC are newly defined as ETOPS routes do not have to re-apply for specific route authority. The certificate holder will be required to comply with all the ETOPS operational requirements in this AC.	121.162 allows for an eight-year 'production cut-in for ETOPS type design requirements for these airplanes. The certificate holder should review their aircraft for applicability. Those airplanes not required to have an ETOPS type design do not have any CMP or Parts control compliance requirements.

3. All airplanes planned on routings any portion of which enter the North Polar or South Polar areas.

Level *1.* Approval	Area of Applicability	Requirements	How to Apply	Comments
	North Polar area – the entire area north of 78N latitude and, South Polar area – the entire area south of 60S latitude	In addition to any applicable requirements of Sections 1. and 2. of this Appendix, the certificate holder's operations specifications must contain the following: **(1)** The designation of alternate airports that may be used for enroute diversions and the requirements the airports must meet at the time of diversion. **(2)** Except for supplemental, all-cargo operations, a recovery plan for passengers at diversion alternates. **(3)** A fuel-freeze strategy and procedures for monitoring fuel freezing. **(4)** A plan to ensure communication capability for these operations. **(5)** An MEL for these operations. **(6)** A training plan for operations in these areas. **(7)** A plan for mitigating crew exposure to radiation during solar flare activity. **(8)** A plan for providing at least two cold weather anti-exposure suits in the aircraft, to protect crewmembers during outside activity at a diversion airport with extreme climatic conditions. The FAA may relieve the certificate holder from this requirement if the season of the year makes the equipment unnecessary.	Certificate holders must submit an application with all supporting data to their local CHDO office. This application must address all the regulatory requirements for Polar operations and the guidance in this AC. The application should be submitted at least 60 days prior to the proposed start of polar operations with the specific airplane-engine combination.	Except for intrastate operations within the State of Alaska. These requirements are in addition to any applicable ETOPS requirements listed in chapters 3 and 4 of this AC. The validation requirements of this approval include an exercise of the certificate holder's passenger recovery plan as per 605..

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Appendix 3. ETOPS Approval Methods

The two different approval methods available for a certificate holder's use are described in this appendix.

1. IN-SERVICE EXPERIENCE METHOD (TWO-ENGINE ETOPS FOR UP TO 180–MINUTE ETOPS).

a. General.

(1) An in-service experience program is one way of gaining ETOPS operational approval. As a prerequisite to obtaining any operational approval, the certificate holder should show that an acceptable level of propulsion system reliability has been achieved in service by the world fleet for that particular airplane-engine combination. The candidate certificate holder also should obtain sufficient maintenance and operation familiarity with the particular airplane-engine combination. Each certificate holder requesting approval to conduct ETOPS by the in-service method should have operational experience appropriate to the operation proposed.

(2) This appendix contains guidelines for requisite in-service experience. These guidelines may be reduced or increased following review and concurrence on a case by case basis by the Director, Flight Standards Service. Any reduction or increase in in-service experience guidelines will be based on an evaluation of the certificate holder's ability and competence to achieve the necessary reliability for the particular airplane-engine combination in ETOPS. For example, a reduction in in-service experience may be considered for a certificate holder who can show extensive in-service experience with a related engine on another airplane that has achieved acceptable reliability. In contrast, an increase in in-service experience may be considered for those cases where heavy maintenance has yet to occur and/or abnormally low number of takeoffs has occurred.

b. Specific Approvals.

(1) 75- and 90-Minute Operation. Consideration may be given to the approval of 75-minute and 90-minute ETOPS for certificate holders with minimal or no in-service experience with the airplane-engine combination. This determination considers such factors as the proposed area of operations, the certificate holder's demonstrated ability to successfully introduce airplanes into operations, and the quality of the proposed maintenance and operations programs.

(2) 120-Minute Operation. Each certificate holder requesting approval to conduct ETOPS with a maximum diversion time (in still air) of 120 minutes should have 12 consecutive months of operational in-service experience with the specified airplane-engine combination. In-service experience guidelines may be increased or decreased by the Director, Flight Standards Service.

(3) 180-Minute Operation.

(a) Each certificate holder requesting approval to conduct ETOPS with a maximum diversion time (in still air) of 180 minutes should have previously gained 12 consecutive months of operational in service experience with the specified airplane-engine combination in conducting 120-minute ETOPS. In-service experience guidelines may be reduced or increased by the Director, Flight Standards Service. Likewise, the substitution of in-service experience, which is equivalent to the actual conduct of 120-minute ETOPS operations, also will be established by the Director, Flight Standards Service, on a case by-case basis.

(b) Before approval, the certificate holder's capability to conduct operations and implement effective ETOPS programs in accordance with the criteria detailed in this AC will be examined. Only certificate holders who have demonstrated capability to successfully conduct a 120-minute program will be considered for approval beyond 120 minutes. Approval will be given on a case-by-case basis for an increase to their area of operation beyond 120 minutes. The dispatch limitation will be a maximum diversion time of 180 minutes to an ETOPS alternate at an approved one-engine-inoperative speed (under standard conditions in still air).

c. Requesting Approval. A certificate holder requesting approval under Title 14 of the Code of Federal Regulations (14 CFR) part 121, § 121.161 for ETOPS under this method should submit the request with the required supporting data to its CHDO at least 60 days before the proposed start of ETOPS operation with the specific airplane-engine combination. In considering an application from a certificate holder to conduct ETOPS, the CHDO should assess the certificate holder's overall safety record, past performance, flight crewmember training, and maintenance programs. The data provided with the request should substantiate the certificate holder's ability and competence to safely conduct and support these operations and should include the means used to satisfy the considerations outlined in this paragraph.

2. ACCELERATED ETOPS METHOD (UP TO 180-MINUTE ETOPS FOR TWO-ENGINE AIRPLANES AND FOR ALL ETOPS FOR PASSENGER-CARRYING AIRPLANES WITH MORE THAN TWO ENGINES). This section describes the means by which a certificate holder may initiate ETOPS operations when the certificate holder establishes the processes necessary for successful and reliable ETOPS operations and proves to the FAA that such processes can be successfully applied throughout the applicant's ETOPS operations. This may be achieved by thorough documentation and analysis of processes and process validation, or demonstration on another airplane/validation (as described under process validation in this appendix, below) or a combination of these processes.

a. ETOPS Processes. The airplane-engine combination for which the certificate holder is seeking accelerated ETOPS operational approval must be ETOPS type design-approved (except for two-engine ETOPS at 75- and 90-minute authorizations and for passenger-carrying airplanes with more than two engines manufactured prior to March 17, 2015) and determined to be operating at a satisfactory level of reliability before commencing ETOPS. The certificate holder seeking accelerated ETOPS operational approval must demonstrate to the FAA that it has an ETOPS program in place that consists of all the following applicable ETOPS process elements:

(1) The process elements defined as the ETOPS maintenance and operations requirements of Chapter 3, paragraphs 301–304.

(2) Documentation of the following elements as appropriate:

(a) Technology new to the certificate holder and significant difference in primary and secondary power (engines, electrical, hydraulic, and pneumatic) systems between the airplanes currently operated and the two-engine airplane for which the certificate holder is seeking ETOPS operational approval.

(b) The plan to train flight and maintenance personnel to the differences identified in the maintenance subparagraph above.

(c) The plan to use proven manufacturer-validated training and maintenance and operations manual procedures relevant to ETOPS for the two-engine airplane for which the certificate holder is seeking accelerated ETOPS operational approval.

(d) Changes to any previously proven validated training, maintenance or operations manual procedures used in previous non-ETOPS operations or in previous ETOPS with a different airplane-engine combination and/or geographic area of operations. Depending on the nature and extent of any changes, the certificate holder may be required to provide a plan for validating such changes.

(e) The validation plan for any additional certificate holder unique training and procedures relevant to ETOPS.

(f) Details of any ETOPS program support from the airframe manufacturer, engine manufacturer, other certificate holders or any other outside person.

(g) The control procedures when maintenance or flight dispatch support is provided by an outside person as described above.

b. Process Validation Methodology.

(1) Paragraph (a) identifies those process elements that should be proven before ETOPS authority is granted by the FAA under the accelerated ETOPS approval program. For a process to be considered proven the process should first be defined. Typically, this will include a flow chart showing the various elements of the process. Roles and responsibilities of the personnel who will be managing this process should be defined including any training requirement. The certificate holder should demonstrate that the process is in place and functions as intended. The certificate holder may accomplish this by thorough documentation and analysis, or by demonstrating on an airplane, that the process works and consistently provides the intended results. The certificate holder should define the necessary evaluation duration to validate the process and also show that a feedback loop exists to illustrate need for revision of the process, if required, based on in-service experience.

(2) Normally the choice to use or not to use demonstration on an airplane as a means of validating individual processes should be

determined by the certificate holder. Process validation may be done with the airframe-engine combination that will be used in ETOPS. It can also be done with a different airplane type from that for which ETOPS approval is being sought, including an airplane with more than two engines, if it can be shown that the particular airplane-engine combination in the certificate holder's ETOPS program is not necessary to validate a process. With sufficient preparation and dedication of resources, such validation may not be necessary to assure processes that produce acceptable results. However, if the plan proposed by the certificate holder to prove processes is determined by the FAA to be inadequate or the plan does not produce acceptable results, validation of the processes with an airplane will be required.

(3) If a certificate holder currently is conducting ETOPS with a different airplane-engine combination, it may be able to document that it has proven ETOPS processes in place with only minimal further validation required. If the certificate holder has similar non-ETOPS operations and can simulate or demonstrate proven ETOPS processes in such operations, credit can be given for such successful evaluations. In either case, the certificate holder should demonstrate that the means are in place to assure equivalent results with the airplane-engine combination being proposed for ETOPS operational approval. The following elements may aid in justifying a reduction in the validation requirement of ETOPS processes:

(a) Experience with other airframes and/or engines,

(b) Previous ETOPS experience,

(c) Experience with long range, overwater operations with two-, three-, or four-engine airplanes, and

(d) Experience gained by flight crewmembers and maintenance and flight dispatch personnel while working with other ETOPS-approved certificate holders.

c. Application for Accelerated ETOPS Program. The certificate holder seeking accelerated ETOPS operational approval should submit an Accelerated ETOPS operational approval plan to the FAA six months before the proposed start of ETOPS. This will provide sufficient time for the certificate holder and the FAA to validate the effectiveness of all ETOPS process elements (''proven process''). The certificate holder's application for ETOPS should—

(1) State the ETOPS authority requested. Define proposed routes and the ETOPS diversion time necessary to support these routes and the airplane-engine combination to be flown.

(2) Define processes and related resources being allocated to initiate and sustain ETOPS operations in a manner that demonstrates commitment by management and all personnel involved in ETOPS maintenance and operational support.

(3) Provide a documented plan for compliance with requirements listed in this section for Accelerated ETOPS.

(4) Define Review Gates. A review gate is a milestone-tracking plan to allow for the orderly tracking and documentation of specific provisions of this Appendix. Each review gate should be defined in terms of the process elements to be validated. Normally, the review gate process will start six months before the proposed start of ETOPS and should continue until at least six months after the start of ETOPS. The review gate process will help ensure that the proven processes comply with the provisions of this AC and are capable of continued ETOPS operations.

d. Validation of Process Elements. When the certificate holders accelerated ETOPS plan receives approval by the CHDO and final concurrence by AFS–200, a validation of the process elements of the accelerated ETOPS plan should begin. Close coordination between the certificate holder and the FAA is necessary for a successful validation of the ETOPS plan. All process elements required in paragraph (a) should be validated.

(1) Before the start of the validation of the process elements, the following information should be part of the Accelerated ETOPS plan submitted to the FAA:

(a) Validation periods, including start dates and proposed completion dates.

(b) Definition of airplane(s) to be used in the validation. List should include registration numbers, manufacturer and serial number and model of the airframes and engines.

(c) Description of the areas of operation (if relevant to validation objectives) proposed for validation and actual ETOPS.

(d) Definition of designated ETOPS validation routes. The routes should be of duration necessary to ensure process validation occurs.

(2) Process validation reporting. The certificate holder should compile results of ETOPS process validation. The certificate holder should:

(a) Document how each element of the ETOPS process was utilized during the validation.

(b) Document any shortcomings with the process elements and measures in place to correct such shortcomings.

(c) Document any changes to ETOPS processes that were required after an IFSD, unscheduled engine removals, or any other significant operational events.

(d) When there is concurrence between the certificate holder and the CHDO that a process element has been successfully proven, the review gate should be closed and confirmation documented.

(e) Provide periodic process validation reports to the FAA. This should be addressed during the review gates.

(3) The certificate holder should include a final review gate prior to final ETOPS approval that is the validation flights described in Chapter 4, paragraphs 404 and 405 of this AC. This review gate should ensure that all ETOPS processes have been proven.

(4) Any validation program should address the following:

(a) The certificate holder should show that it has considered the impact of the ETOPS validation program with regard to safety of flight operations. The certificate holder should state in its application any policy guidance to personnel involved in the ETOPS process validation program. Such guidance should clearly state that ETOPS process validation exercises should not be allowed to adversely impact the safety of operations especially during periods of abnormal, emergency, or high cockpit workload operations. It should emphasize that during periods of abnormal or emergency operation or high cockpit workload ETOPS process validation exercises may be terminated.

(b) The validation scenario(s) should be of sufficient frequency and operational exposure to validate maintenance and operational support systems not validated by other means.

(c) A means must be established to monitor and report performance with respect to accomplishment of tasks associated with ETOPS process elements. Any recommended changes to ETOPS maintenance and operational process elements should be defined.

e. Final Approval for Accelerated ETOPS Authority. At the successful completion of the certificate holder's accelerated ETOPS validation program all process elements should have been validated and appropriate review gates closed. Report of a successful completion of review gates will be forwarded by the CHDO to AFS–200. Upon final concurrence and approval, the applicant should forward to the FAA a plan for final validation flights to be conducted over proposed routes in the ETOPS area of operation and in the airframe-engine combination listed in the certificate holder's application. This FAA witnessed ETOPS validation flight or flights will be conducted in accordance with Chapter 4, paragraphs 404 and 405 of this AC. The purpose of these flights is for the certificate holder to demonstrate to the FAA that it has the competence and capability to safely conduct and adequately support the intended ETOPS operation.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket Number FAA–2002–6717]

Proposed Advisory Circular No. 135–42, Extended Operations (ETOPS) and Operations in the North Polar Area

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed Advisory Circular (AC): AC No. 135–42, Extended Operations (ETOPS) and Operations in the North Polar Area. Also in this **Federal Register**, the FAA publishes draft AC No. 120–42B, Extended Operations (ETOPS) and Polar Operations, for public comment.

DATES: Comments must be received on or before October 17, 2007.

ADDRESSEES: Send all comments on the proposed AC to Docket Number FAA–2002–6717, using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Ryan, Air Transportation Division (AFS–220), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7493, e-mail *Jim .Ryan@faa.gov.*

SUPPLEMENTARY INFORMATION

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44703.

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC No. 135–42 and submit comments to the address specified under **ADDRESSES.** All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

An electronic copy of the proposed AC, which is published in full here, may be obtained by accessing the FAA's Web page at—*http://www.faa.gov/regulations_policies/rulemaking/recently_published/.*

The Extended Operations (ETOPS) final rule was published in the **Federal Register** on January 16, 2007. This final rule applies to air carrier (part 121), commuter, and on-demand (part 135) turbine powered multi-engine airplanes used in extended-range operations. All-cargo operations in airplanes with more than two engines were exempted from most of the rule. It established regulations governing the design, operation and maintenance of certain airplanes operated on flights that fly long distances from an adequate airport. This advisory circular provides further guidance for these extended operations to those conducting operations under 14 CFR part 135. It also further clarifies the rule's requirements for Polar operations.

Issued in Washington, DC on August 27, 2007.

James J. Ballough,

Director, Flight Standards Service.

Draft Advisory Circular No. 135–42, Extended Operations (ETOPS) and Operations in the North Polar Area

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Chapter 1. General

101. Purpose.

a. This advisory circular (AC) provides certificate holders guidance for obtaining operational approval to conduct extended operations (ETOPS) under Title 14 of the Code of Federal Regulations (14 CFR) part 135, § 135.364. Operations under part 135 with multi-engine turbine-engine powered airplanes may be authorized over a route that contains a point farther than 180 minutes flying time, but no more than 240 minutes flying time, from an airport meeting the requirements of § 135.385 or § 135.393 and § 135.219 at an approved one-engine inoperative cruise speed (see Appendix 1 for definition of one-engine inoperative cruise speed) under standard conditions in still air. This AC also provides guidance for obtaining authorization under § 135.98 to conduct operations in the North Polar Area.

b. This AC provides an acceptable means of complying with the regulations; however it is not the only means of compliance. When this AC uses mandatory language (e.g., ''must'' or ''may not'') it is quoting or paraphrasing a regulatory requirement or prohibition. When this AC uses permissive language (e.g., ''should'' or ''may''), it describes an acceptable means, but not the only means, of obtaining operational approval to conduct ETOPS under Title 14 of the Code of Federal Regulations (14 CFR) part 135, § 135.364.

c. This AC also provides information and guidance that could be useful for certificate holders conducting flights less than 180 minutes from an airport during other long range operations.

102. Applicability. This AC provides guidance to certificate holders applying

for approval to conduct ETOPS under part 135. This AC also provides guidance to certificate holders and other operators currently conducting such operations in resolving operational issues that may arise.

103. Canceled ACs and Policy Letters. None, this is a new AC having applicability to part 135 operations.

104. Related Regulations.

a. Appendix G to part 135, Extended Operations.

b. Appendix P to part 121, Requirements for ETOPS and Polar Operations.

c. Appendix K to part 25, Extended Operations.

d. AC 25–XX, Type Design Approval for ETOPS.

e. AC 33–100, Turbine Engines Eligibility for Early ETOPS.

f. AC 120–ETOPS, Extended Operations.

g. Sections 135.98, 135.345, 135.364, 135.385, 135.387, 135.393, 135.395, 135.219, 135.321, and 135.411.

Chapter 2. ETOPS Background

201. ETOPS Regulatory Requirements.

a. All airplanes operated under part 135 are required to comply with § 135.364. This regulation imposes special requirements for multi-engine turbine-powered airplanes to operate over a route that contains a point farther than 180 minutes flying time at an approved one-engine inoperative cruise speed in still air from an adequate airport outside the continental United States. Special requirements are imposed for any airplane that operates a route, a portion of which enters these areas of operation. It is significant to note that this rule applies equally to airplanes operating over oceanic areas or over land.

b. To conduct ETOPS, the specified airplane-engine combination must be certificated to the airworthiness standards of transport-category airplanes and be approved for ETOPS. However, Appendix G to part 135 allows those airplanes manufactured prior to February 16, 2015, to be grandfathered from the ETOPS type certification requirements. In addition, the certificate holder must be approved for ETOPS under part 135. As with all other operations, a certificate holder requesting any route approval must show that it is able to satisfactorily conduct operations between each required airport, as defined for that route or route segment and any required en route alternate airport.

202. Extended Operations (ETOPS). Since 1985, the acronym, ETOPS, has been defined as ''extended twin operations'' and has been limited to part 121 airplanes with only two engines. Current regulations have extended these applications to airplanes operating in both parts 121 and 135, and the acronym has now been redefined to mean ''extended operations.'' This is to acknowledge the similarity of certain long-range operations of all airplanes operating today and the common issues that impact such operations. Even though for continuity with current two-engine operations the existing acronym ETOPS is retained, the ETOPS acronym has been re-defined. The concept has been expanded to include all passenger carrying airplane operations in part 135 planned where a proposed flight plan includes any point that is greater than 180 minutes from an adequate airport (at an approved one-engine inoperative cruise speed under standard conditions in still air).

203. ETOPS Applicability to Part 135 Long Range Operations.

a. The Federal Aviation Administration (FAA) and industry analysis of the accidents and incidents involving longer range operations conducted in accordance with part 135 indicate that they have been conducted for many years with a high degree of safety without regulatory limitations on range. Before February 15, 2007, no additional regulations had been promulgated. However, since 1998 it has been FAA's policy to limit flights conducted under part 135 to 180 minutes from an airport. In recent years, several manufacturers have produced new turbine engine-powered airplanes with range capabilities that could take them well beyond 180 minutes from an airport. As a result these airplane operations are now compatible with those long range operations typically associated with large three- and four-engine part 121 airplanes. Because of their smaller maximum payload and seating capacity, despite their range capabilities, these airplanes are authorized to operate in accordance with part 135.

b. Those geographic areas not within 180-minutes of an airport tend to be remote areas of the world that are uniquely challenging for all certificate holders and airplanes, regardless of the number of engines. Some of these issues are extremes in terrain and meteorology and limited navigation and communications infrastructure. The margin of safety is increased when adequate consideration is made for a possible diversion and subsequent recovery in such areas. These considerations include additional crewmember and maintenance technician training, assurance that certain airplane equipment and systems are installed and functioning before takeoff, more thorough flight planning, and additional fuel reserves. The development and application of ETOPS requirements is intended to address all these issues.

c. ETOPS requirements are intended to address all these issues, while also bringing FAA regulations into compliance with International Civil Aviation Organization (ICAO) Standards and Recommended Practices.

Note: The ICAO Standards and Recommended Practices, Annex 6, Operations of Aircraft, Part I—International Commercial Air Transport—Airplanes, states that unless the operation has been specifically approved by the state of the certificate holder, no twin-engine aeroplane shall be operated on a route where the flight time at single engine cruise speed to an adequate airport exceeds a threshold time established for such operations. The United States is a signatory to ICAO.

204. ETOPS Areas of Operation.

a. An ETOPS area of operation is an area within the authorized ETOPS maximum diversion time approved for the operations being conducted. For multi-engine turbine-powered airplanes operating under part 135 it is described as an area beyond 180 minutes from an adequate airport, planned to be no more than 240 minutes from an adequate airport, in still air at normal cruise speed with one-engine inoperative. Because of the impact such distances might have on the diversion time of an airplane, regulatory guidance has been established for the planning, operational, and equipage requirements for such operations. A certificate holder must apply to the Administrator for approval to operate in an ETOPS area using the methodologies in this AC and will be granted ETOPS authority for a specific ETOPS area of operations in their operations specifications.

b. The certificate holder will typically request a specific ETOPS area of operation based on an analysis of proposed routings and the availability of airports sufficient to support the operational requirements of the ETOPS regulations. The area bounded by distance circles from adequate airports representing the approved one-engine inoperative cruise speed under standard conditions in still air chosen by the applicant is normally used during the route planning stage to determine an ETOPS area of operation. Once a certificate holder determines from their route planning that the ETOPS requirements apply, all subsequent flight planning in the ETOPS area of operation must account for the affects of wind and temperature on the calculated

distances from each ETOPS alternate airport. The time-limited capabilities of certain airplane systems must be able to support these varying distances to maintain dispatch reliability. It is therefore incumbent on a certificate holder who applies for ETOPS approvals to have time limited system capabilities that can satisfy the regulations under expected meteorological conditions over planned routes or have airports of sufficient availability to support the maximum ETOPS type design capability of the airplane-engine combination in their application.

205. ETOPS Risk Management and the Level of Safety.

a. Current service experience for the newest generation of engines developed for airplanes typically operated over long distances in accordance with part 135 indicate that engine reliability may not be the most significant issue relative to the safety of ETOPS or any long range flight. As propulsion systems have achieved ever-increasing levels of reliability, other systems and operational issues have increased in their relevance to the overall level of safety of the flight.

b. The number of airplanes and operations conducting ETOPS under part 135 is forecast to remain relatively small for the foreseeable future. This greatly reduces the usefulness and reliability of safety trend analysis based on fleet averages of specific airframe/engine combinations. Accordingly, the means of ensuring an adequate level of safety for ETOPS is to require that certificate holders and manufacturers of airplanes conducting ETOPS evaluate each reported malfunction, incident, or accident pertaining to an airframe, powerplant system, or other critical component on an airplane that is relevant to the conduct of ETOPS. Subsequent to this evaluation, corrective action may be required on the part of the certificate holder or manufacturer before ETOPS operations continue.

206. ETOPS Reliability and Systems Suitability Requirements.

a. The safety of long-range operations (ETOPS) depends on the reliability of all critical airplane systems, including the propulsion systems. Therefore, a comprehensive program to monitor the reliability of flight-critical systems is essential. The type design requirements of ETOPS certification consider the probability of any condition that reduces the capability of the airplane or the ability of the flight crewmember to cope with an adverse operating condition. System failures or malfunctions occurring during ETOPS could affect flight crewmember workload and procedures. Although the demands on the flight crewmember may increase, a manufacturer applying for ETOPS type design approval must consider crew workload, operational implications, and the crew's and passengers' physiological needs during continued operation with failure effects for the longest diversion time for which it seeks approval. The manufacturer must also conduct flight tests to validate the adequacy of the airplane's flying qualities and performance, and the flightcrew's ability to safely conduct an ETOPS diversion with expected system failures and malfunctions. An ETOPS operator should carefully consider the possible adverse effects that changes in airplane equipment or operating procedures may have on the original evaluations conducted when the airplane was approved for ETOPS before implementing such changes.

b. Following a determination that the airframe systems and propulsion systems are ETOPS type design approved as per FAR part 25, an in-depth review of the applicant's required ETOPS programs will be accomplished to show the ability to achieve and maintain an acceptable level of systems reliability and to safely conduct these operations.

207. Preclude and Protect.

a. ETOPS is intended to preclude a diversion and, if it were to occur, have programs in place that protect that diversion. Under this concept, propulsion systems and other airplane systems are designed and tested to ensure an acceptable level of reliability. Maintenance practices monitor the condition of engines so as to identify problems before they cause diversions, and take aggressive steps to identify and resolve airplane systems and engine problems once they are identified. All are intended to minimize the potential for procedural and human errors, thereby precluding a diversion.

b. However, despite the best design/testing and maintenance practices for airplanes, situations may occur that require an airplane to divert. Regardless of whether the diversion is for technical (airplane or engine systems) or non-technical reasons (crewmember or passenger illness), there must be a flight operations plan to protect that diversion, ensuring that it is successful. Such a plan may include ensuring that pilots are knowledgeable about the availability of en route alternate airport alternates, weather conditions at those alternates, adequate ability to communicate with appropriate flight following services and air traffic control, sufficient fuel to divert to the alternate, etc.

c. Under the preclude and protect concept, various failure scenarios are considered. For example, during the design of the airplane, time limited systems such as oxygen capability must be considered. Fuel planning must account for an engine failure, the possibility of a decompression, and subsequent descent to a lower altitude. It must also include considerations for encountering en route icing at the lower altitude. The best options under any of these scenarios should be provided to the pilot before and during the flight.

d. Airplanes divert from time to time for various reasons, most of which are not related to failure of a powerplant. Airplanes with more than two engines also operate in areas where there are a limited number of en route airports, the support infrastructure is marginal, or there are challenging weather conditions. All ETOPS flights, therefore, regardless of the number of engines on the airplane, must adopt the same preclude and protect concept. If operations with airplanes with more than two engines are contemplated in areas where en route airports are farther than 180 minutes flight time, these operations also are required to meet the standards defined under ETOPS. This ensures that sufficient efforts are made to preclude a diversion and, if a diversion does occur, procedures are in place to protect that diversion.

208. ETOPS Alternate Airport Requirements.

a. One of the distinguishing features of ETOPS operations is the concept of an en route alternate airport being available where an airplane can divert after a single failure or combination of failures. Whereas most airplanes operate in an environment where there is a choice of diversion airports available within close proximity to the route of flight, an airplane conducting ETOPS may have only one alternate within a range dictated by the endurance of a particular airframe system. Therefore, it is important that any airport designated as an ETOPS alternate airport has the capabilities and facilities to safely support the airplane and its passengers and crewmember for the diversion. The weather conditions at the time of arrival should provide assurance that adequate visual references are available upon arrival at decision height or minimum descent altitude (MDA), and the surface wind conditions and corresponding runway surface conditions must be within acceptable limits to permit the approach and landing to be safely completed with an engine and/or systems inoperative.

b. When the airplane departs on a route planned for ETOPS, an en route alternate must meet alternate weather requirements specified in the certificate holder's operations specifications. Because of the natural variability of weather conditions with time, as well as the need to determine the suitability of a particular en route alternate before departure, such requirements are higher than the weather minimums required to initiate an instrument approach. This is necessary to provide for some deterioration in weather conditions after planning, prior to the time that the instrument approach will be conducted. This increases the probability, considering weather conditions, that the flight will land safely after a diversion to an alternate airport.

c. While en route, the forecast weather for designated ETOPS alternate airports must remain at or above operating minima. This allows the pilot in command of an ETOPS flight to successfully resolve diversion decisions. While in-flight, the suitability of an ETOPS alternate airport is based solely on a determination that the weather and field conditions at that airport at the predicted time of arrival will permit an instrument approach to be initiated and a safe landing completed.

209. ETOPS In-Service Experience.

a. Safety is enhanced when, before conducting ETOPS, a certificate holder gains operational experience in the type of airplane capable of ETOPS, and with the operational environment typically encountered on longer range flights in areas where airports available for an en route diversion are limited. Typically, this involves prior operational experience on overwater flights to international areas of operation in accordance with part 135. However, it is recognized that once a certificate holder is authorized to conduct ETOPS with one type of airplane, the procedures and systems are in place to support additional airplane types. Therefore, when a certificate holder currently authorized to conduct ETOPS adds additional ETOPS capable airplane types, the 12 months experience requirements under Appendix G to part 135, § G135.2.2. Required certificate holder experience prior to conducting ETOPS, will not apply.

b. A firm commitment by the certificate holder to establish adequate ETOPS procedures before the start of actual operations, and continued commitment throughout the life of the program to continually review these procedures, is a significant factor in safe and reliable ETOPS.

Chapter 3. Requirements for ETOPS Authorization

Section 135.364 permits operation of passenger-carrying airplanes over a route that contains a point farther than 180 minutes flying time from an airport in still air at normal cruising speed with one-engine inoperative when approved by the Administrator. Certificate holders seeking approval for ETOPS must incorporate ETOPS requirements into their approved operations, and if required, maintenance programs. ETOPS must be authorized in the certificate holder's operations specifications and conducted in compliance with those sections of part 135 applicable to ETOPS, including Appendix G.

Two independent transmitters and two independent receivers, appropriate to the planned route, are required for ETOPS flights. At least one of each must be capable of voice communication. If operating in areas where voice communication is not possible or of poor quality, alternate systems such as data link may be used.

301. Airplane Requirements for ETOPS Authorization.

a. Airplanes Manufactured after February 15, 2015. No person may operate a passenger-carrying multi-engine airplane that was manufactured after February 15, 2015 in accordance with ETOPS unless the airplane is certificated for ETOPS under 14 CFR part 25, § 25.1535.

b. Airplanes Manufactured on or Before February 15, 2015. Passenger-carrying, multi-engine turbine-powered airplanes manufactured on or before February 15, 2015 do not need to be type designed for ETOPS in accordance with § 25.1535. However, the airplane should be acceptable to the Administrator.

302. Certificate Holder Requirements for ETOPS Authorization.

a. Operational Experience.

(1) As international operating experience typically involves long-range flights, before applying for authorization to conduct ETOPS a certificate holder must have at least 12 months experience operating a transport-category multi-engine turbine-powered airplane in international operations (excluding Canada and Mexico). Operations to or from the State of Hawaii may be considered as experience in international operations.

(2) Certificate holders granted authority to operate under part 135 or part 121 before February 15, 2007, may credit up to 6 months of domestic operating experience (including Canada and Mexico) in a transport category turbojet airplane as part of the required 12 months of international experience.

(3) Operating experience gained by a certificate holder in operating any type of equipment in ETOPS may be credited towards the operating experience requirements.

b. Oversight Activities.

(1) Certificate holders should ensure that:

(a) All appropriate management personnel are aware of the unique and demanding nature of ETOPS.

(b) Airplanes involved in ETOPS receive the highest feasible level of flight-following services.

(2) Certificate holders should:

(a) Ensure that airplanes flown in accordance with ETOPS are maintained and equipped according to recommended ETOPS standards and practices.

(b) Ensure that flightcrew and maintenance personnel involved in ETOPS are properly trained and qualified in all aspects of ETOPS per the certificate holders approved programs.

(c) Develop a Minimum Equipment List (MEL) that reflects the unique aspects of ETOPS for each type of airplane operating in accordance with ETOPS.

(d) In addition to the information required in § 135.83, certificate holders must ensure flight crewmembers, for preflight and during flight, have access to the most current information available about possible ETOPS alternates, destination and destination alternate airports to include:

1. Airports.
- Facilities (for example snow removal, fuel availability, aircraft rescue and fire fighting capability)
- Navigation and communications aids
- Construction affecting takeoff, landing, or ground operations
- Air traffic facilities

2. Runways, clearways, and stopways.
- Dimensions
- Surface
- Marking and lighting systems
- Elevation gradient

3. Displaced thresholds.
- Location.
- Dimensions.
- Take off, landing or both.

303. Flight Crewmember Training Requirements for ETOPS. The certificate holder's flight crewmember training program must provide ETOPS training for flight crewmember in accordance with its approved program for ETOPS. The training should include, but is not limited to, the following areas:

a. ETOPS regulations and advisory materials.

b. Review of representative routes and airports within a ETOPS area of operation.

c. Procedures for determining the ETOPS entry point and maximum diversion distance allowed under ETOPS.

d. Procedures for determining, before entry into an ETOPS area of operation, that critical systems and components are operating within normal parameters. Critical Systems and components that may affect the decision to enter into the ETOPS area of operation include, but are not limited to the following:

(1) Engines and powerplants.

(2) Pressurization.

(a) Dual sources of pressurization.

(b) Automatic pressurization mode.

(3) A sufficient supply of oxygen for the planned flight, and the impact oxygen endurance may have on fuel requirements.

(4) Auto flight system, including:

(a) Altitude hold.

(b) Heading hold.

(5) Electrical systems.

e. Airplane performance, including engine-out performance data, driftdown, engine-out service ceiling data, and engine-out instrument approach procedures.

f. Flight preparation, planning, and preflight, including:

(1) ETOPS alternate airport requirements.

(2) Conduct a crewmember briefing for each ETOPS leg.

(3) Inflight procedures for updating weather forecasts and other reports of airport conditions.

(4) Fuel/oil requirements at departure, including calculation of reserves required for:

(a) Identification of the most critical fuel-use scenario and most critical point for a diversion during a flight, considering possible one-engine failure and/or airplane depressurization with all engines operating or one engine out.

(b) The uncertainty of long-term terminal and en route weather forecasts.

(c) The uncertainty of en route wind forecasts in remote areas.

(d) Possible navigational inaccuracy.

g. Flight progress monitoring, including fuel management procedures in the event a diversion is necessary for any reason.

h. Criteria for selecting appropriate ETOPS alternate airports, both during flight planning and in flight, including the impact of en route changes in weather forecasts and other operational conditions that may impact use of these airports.

i. Procedures and guidelines for making timely and appropriate diversion decisions and implementing appropriate diversion procedures, including:

(1) Use of alternate navigation and communication systems, including flight management devices.

(2) Abnormal and emergency procedures to be followed in the event of equipment or systems failures during ETOPS, including:

(a) Considerations for single, multiple, and compounding (that is, one failure leads directly or indirectly to the failure of another piece of equipment) failures in flight that would precipitate a go/no-go and diversion decision. For example, if standby sources of electrical power significantly degrade cockpit instrumentation to the pilots, training should include considerations for flying an instrument approach with instruments powered only by an alternate source of electrical power.

(b) Operational restrictions associated with equipment or component/systems failures, including restrictions associated with existing deferred maintenance items (MEL and/or Configuration Deviation List considerations).

(c) Use of emergency equipment, including duration of time limited systems such as battery, oxygen, and fire extinguishing.

(d) Procedures to be followed in the event a planned ETOPS alternate airport is no longer acceptable.

j. Understanding of normal and abnormal/emergency procedures for additional or equipment modified specifically for ETOPS (modified oxygen and fuel systems).

k. Fuel management procedures and monitoring/logging procedures to be followed during the en route portion of the flight. These procedures should provide for an independent cross check (manual versus automatic or pilot versus copilot) of fuel quantity indicators. For example, fuel flows could be used to calculate fuel burned and compared to fuel loaded minus indicated fuel remaining.

l. ETOPS pre-departure service or maintenance checks must be performed by flight crewmembers that holds an airframe and powerplant certificate and is ETOPS-qualified before departure on a ETOPS flight from an airport lacking ETOPS-trained maintenance personnel.

m. Methods of maintaining position and situational awareness.

n. Methods of determining the location of the nearest en route alternate airports.

o. Use of plotting charts, both preflight and in flight.

p. Responsibilities following an unscheduled landing.

Note: Check Airman used by the certificate holder for ETOPS training should ensure standardized flight crewmember practices and procedures are followed and emphasize the special nature of ETOPS. In addition to the check airman qualification and training requirements of §§ 135.337 and 135.339, certificate holders should require that company check airmen understand the unique requirements of ETOPS.

304. Maintenance Requirements for Two-Engine ETOPS Authorization. The certificate holder conducting ETOPS with two-engine airplanes must comply with the ETOPS maintenance requirements as specified in § 135.411(d), which are discussed in this section.

a. Maintenance Program Requirements. The basic maintenance program for the airplane being considered for ETOPS is the certificate holder's continuous airworthiness maintenance program. Each airplane authorized to conduct ETOPS must be maintained under such a program as provided in § 135.411(a)(2) regardless of the airplane-engine combination, size and seating configuration, plus the additional requirements contained in Appendix G to part 135. In addition to the basic, minimum continuous airworthiness maintenance program requirements, the certificate holder must develop and use an ETOPS maintenance program to include the following:

(1) Continuous Airworthiness Maintenance Program (CAMP). The basic maintenance program for the airplane being considered for ETOPS is a CAMP that may currently be approved for a non-ETOPS certificate holder for a particular make and model airplane-engine combination. The basic CAMP must be a maintenance and inspection program that contains the instructions for continued airworthiness (ICA) based on the manufacturer's maintenance program, or those contained in a certificate holder's maintenance manual approved in its operations specifications. The certificate holder and its certificate-holding district office (CHDO) must review the CAMP to ensure it provides an adequate basis for development of a ETOPS maintenance program. The certificate holder's ETOPS CAMP must include specific basic ETOPS requirements, which will be incorporated as supplemental requirements to the CAMP. These supplemental requirements include the enhanced maintenance and training processes that will ensure ETOPS airplanes achieve and maintain the level of performance and reliability necessary for ETOPS operations. These supplemental requirements are referred

to in the industry as ETOPS processes or ETOPS process elements. Prospective ETOPS certificate holders must supplement their basic CAMP with the following program elements defined in sections b through p below.

b. ETOPS Maintenance Document. The certificate holder must develop a document for use by personnel involved in ETOPS. This document need not be inclusive but should at least reference the maintenance program and other pertinent requirements clearly indicating where all facets of the ETOPS maintenance program are located in the certificate holder's document system. All ETOPS requirements, including supportive programs, procedures, duties, and responsibilities, must be identified. The ETOPS document(s) must reflect the actual policies and procedures the certificate holder expects their ETOPS maintenance personnel to adhere to. The document(s) should be user friendly, and be accessible to all affected personnel. The initial document and each revision must be submitted to the CHDO and be approved before being adopted.

c. Pre-Departure Service Check (PDSC).

(1) The certificate holder must develop an ETOPS PDSC to verify that the airplane and certain significant items are airworthy and ETOPS capable. Each certificate holder's PDSC may vary in form and content. One certificate holder may have a one page PDSC while other certificate holders using the same airplane-engine combination may have six or more pages of items in their PDSCs. The prerequisite for an acceptable PDSC is content and suitability for the specific certificate holder's needs.

(2) All certificate holders must address ETOPS significant system airworthiness in their ETOPS maintenance program, including the PDSC. For example, proper servicing of fluids, such as engine, auxiliary power unit (APU), generator systems, and hydraulic systems is a vital ingredient to successful ETOPS operations. Current ETOPS operations have had incidents resulting from improper fluid servicing that have resulted in IFSDs and diversions. Certificate holders should consider this area very seriously when developing their maintenance checks, including the PDSC.

(3) Some certificate holders may elect to include tasks in the PDSC that are driven by their enhanced CASS program and are not related to ETOPS significant systems. However, the certificate holder clearly must identify the ETOPS related tasks on their PDSC because non-ETOPS qualified maintenance personnel may accomplish the non-ETOPS tasks. An ETOPS-qualified maintenance individual must complete all ETOPS-related tasks and an ETOPS-qualified maintenance individual with an airframe and powerplant rating must certify the entire check. When outside the United States, if an individual with an airframe and powerplant rating is not available, then a trained individual employed by a FAA certificated repair station must certify the entire PDSC. The PDSC must be certified complete immediately before each scheduled ETOPS flight. The term ''immediately'' historically has meant to be no more than 2 to 4 hours before the flight. However, some relief from this time may be granted under certain conditions. The certificate holder should explain any rational for such deviations in its ETOPS maintenance document, which is approved by its CHDO.

(4) A PDSC may not be required before all ETOPS flights. The FAA may grant relief following irregular operations because of non-mechanical issues, such as weather or medical emergency diversions, or when operating ETOPS into specific areas of operation. For example, if an airplane scheduled for an ETOPS flight receives a PDSC before departure and subsequently must divert or turn back for other than mechanical reasons, the certificate holder must identify in its ETOPS maintenance document what procedures its flight operations and maintenance personnel would follow to preclude performing another PDSC. If a mechanical discrepancy develops as a result of the diversion or turn back, the certificate holder would have to perform another PDSC. For example, when an overweight landing inspection reveals a discrepancy that requires maintenance intervention, another PDSC would be required.

d. ETOPS Dual Maintenance Procedures.

(1) ETOPS dual maintenance, otherwise referred to as identical maintenance, multiple maintenance, and simultaneous maintenance, requires special consideration by the certificate holder. This is to recognize and preclude common cause human failure modes. Proper verification processes or operation tests prior to ETOPS are required when dual maintenance on significant systems occurs.

(2) Dual maintenance on the ''same'' ETOPS significant system can be described as actions performed on the same element of identical, but separate ETOPS significant systems during the same routine or non-routine visit. Examples of maintenance on the ''same'' ETOPS significant system are: maintenance of both SATCOM systems during a turnaround flight; removal of both engine oil filters or both chip detectors; and replacement of both chip detectors.

(3) Dual maintenance on ''substantially similar'' ETOPS significant systems specifically addresses maintenance actions on engine-driven components on both engines. An example of dual maintenance on ''substantially similar'' ETOPS significant systems could include: replacement of the no. 1 integrated drive generator and the no. 2 engine-driven pump.

(4) The certificate holder must establish procedures that minimize identical maintenance actions from being scheduled or applied to multiple similar elements in any ETOPS significant system during the same or non-routine visit. In order to manage this requirement the certificate holder must develop a list of fleet-specific ETOPS significant systems and include them in their ETOPS maintenance document(s).

(5) The FAA also recognizes that sometimes ETOPS dual maintenance actions cannot be avoided or precluded, because of unforeseen circumstances that occur during ETOPS operations. In the line maintenance arena, for example, when an ETOPS airplane has inbound discrepancies on both engines' oil systems, or there is a generator problem on one engine, and an oil system discrepancy on the other engine. Another example is if both SATCOM systems require maintenance at the same time during a turnaround flight. Additionally, staggering maintenance on ETOPS Significant Systems in the heavy maintenance arena isn't always possible or feasible. However, to minimize human factor common cause risk, the certificate should attempt to minimize dual maintenance on ETOPS Significant Systems wherever/whenever possible.

(a) In any event, when dual maintenance is performed on a ETOPS Significant System, the certificate holder must have written procedures in its ETOPS maintenance document that address this situation. At a minimum, the certificate holder must ensure:

1. Separate ETOPS-qualified maintenance persons perform the tasks.

2. The maintenance action on each of the elements in the ETOPS Significant System is performed by the same technician under the direct supervision of a second ETOPS qualified individual, and

3. It verifies the effectiveness of the corrective actions to those ETOPS Significant Systems before the airplane

enters the ETOPS area of operations. The verification action must be performed using ground verification methods, and in some instances, in-flight verification methods described in the next section of this AC. On an exception basis, the same ETOPS qualified technician under the supervision of an ETOPS qualified Central Maintenance Control person may perform the dual maintenance and the ground verification methods only if in-flight verification action is performed.

(b) The FAA acknowledges that the servicing of fluids and gases is not considered maintenance; however, these task when done improperly have adversely affected ETOPS operations. The certificate holder should recognize the hazard associated with improper servicing and do all possible to mitigate the associated risk. Specifically, servicing tasks such as engine, APU, and generator system oil servicing are tasks that require high levels of attention. The FAA encourages the certificate holder to ensure that its programs have separate individuals perform such servicing. However, the FAA recognizes that many certificate holder's route and organizational structures may not lend themselves to these procedures. The certificate holder's programs should include detailed servicing instructions or make readily available servicing instructions, and provide related on-the-job training, regardless of whether one individual or multiple individuals perform the task.

e. Verification Program.

(1) The certificate holder must develop a verification program for resolution of airplane discrepancies (corrective action) in ETOPS significant systems. This program must include corrective action confirmation in specific areas such as engine shutdown, significant system failure, adverse trends, or any prescribed event that could effect an ETOPS operation. The program must ensure corrective action is taken and confirmed successful before the airplane enters an ETOPS area of operation. The certificate holder must verify the effectiveness of the corrective actions and prior to ETOPS flight or entering ETOPS entry point. The ground verification method is accomplished by following the ICA contained in the airplane maintenance manuals or the certificate holder's maintenance manuals. These ICAs include built-in test equipment, functional, and operational checks that often include leak checks after ground runs.

(2) Normally ground verification is acceptable to ensure corrective action. Under certain conditions ground verification beyond that recommended in the ICA or in-flight verification maybe required. An example of a condition that would require an in-flight verification is the replacement of an APU component that could affect the APU's ability to start at ETOPS cruise altitude after cold soaking. In-flight verification may be conducted on revenue flights provided the action is completed before the ETOPS entry point. Ground maintenance personnel must coordinate with flight operations personnel whenever an in-flight verification is required. Each certificate holder must identify its ETOPS Significant Systems, ground verification requirements, and in-flight verification requirements in it ETOPS maintenance document.

(3) The certificate holder must establish a means to ensure any required verification action is accomplished. The certificate holder must include a clear description of who initiates verification actions and who is responsible for completing the actions in its ETOPS maintenance document.

f. Task Identification.

(1) The certificate holder must identify all tasks that must be accomplished or certified as complete by ETOPS qualified personnel. The intent is to have ETOPS trained maintenance personnel accomplish these identified tasks because they are related to ETOPS. ETOPS specific tasks should be:

(a) Identified on the certificate holder's work forms and related instructions, or

(b) Parceled together and identified as an ETOPS package.

(2) If a certificate holder does not identify ETOPS-related task in their current maintenance program, then all task must be accomplished by ETOPS-qualified personnel.

(3) In the event that maintenance is performed on an ETOPS airplane by personnel who are not ETOPS trained, then the actions must be verified per the certificate holder's ETOPS verification program.

g. Centralized Maintenance Control Procedures. An ETOPS certificate holder, regardless of the size of the ETOPS fleet, must have a centralized entity responsible for oversight of the ETOPS maintenance operation. The certificate holder must develop and clearly define in its ETOPS maintenance document the specific procedures, duties, and responsibilities for involvement of their centralized maintenance control personnel in the ETOPS operation. These established procedures and centralized control processes would preclude an airplane from being dispatched for ETOPS flights after an engine in-flight shut down (IFSD), ETOPS significant system failure, or discovery of significant adverse trends in system performance without appropriate corrective action having been taken.

h. ETOPS Parts Control. The certificate holder must develop a parts control program that ensures that proper parts and configurations are maintained for ETOPS. The program must include procedures to verify that the parts installed on ETOPS airplanes during parts borrowing or pooling arrangements, as well as those parts used after repair or overhaul, maintain the necessary ETOPS configuration.

i. Enhanced Continuing Analysis and Surveillance System (CASS) Program. The CASS program must be enhanced to include all of the elements of the ETOPS CAMP. The program must include the additional reporting procedures for significant events detrimental to ETOPS flights contained in Appendix G to part 135.

j. Propulsion System Monitoring.

(1) The certificate holder must conduct an investigation into the cause of each IFSD and submit findings to the CHDO. If the certificate holder or CHDO determines that corrective action is necessary. The certificate holder must implement a corrective action. For all Propulsion System reportable events the certificate holder should determine whether corrective action is required. If the cause of an event is identified within a certificate holder's area of responsibility, the certificate holder should take immediate corrective action.

(2) Causes of IFSDs or other engine/propulsion system problems may be associated with type design problems, and/or maintenance and operational procedures applied to the airplane. It is very important to identify the root cause of events so that an indication of corrective action is available; a fundamental design problem requires an effective final fix. Repetitive inspections may be satisfactory as interim solutions but long term design solutions such as terminating actions, may be required. Design problems can affect an entire fleet of airplanes. A certificate holder, who experiences a failure that is a type design related event, should not be operationally penalized by the Administrator for a problem that is design-related and may not be of their own making. However, maintenance or operational problems may be wholly, or partially, the responsibility of the certificate holder.

k. Engine Condition Monitoring. The certificate holder must develop a

program for its ETOPS engines that describes the parameters to be monitored, method of data collection, and corrective action processes. The program should reflect the manufacturer's instructions and industry practices or they should establish a program that demonstrates an equivalent level of monitoring and data analysis. The goal of this monitoring program should be to detect deterioration at an early stage, and to allow for corrective action before safe operation is affected. Engine limit margins should be maintained so that prolonged engine inoperative diversions may be conducted without exceeding approved engine limits (for example, rotor speeds and exhaust gas temperature) at all approved power levels and expected environmental conditions. Engine margins preserved through this program should account for the effects of additional engine loading demands (for example anti-ice and electrical), which may be required during IFSD flight phase associated with the diversion. If oil analysis monitoring, such as the Spectrographic Oil Analysis Program, is meaningful and recommended by the manufacturer, the certificate holder should include it in their program.

l. Oil Consumption Monitoring. The certificate holder must develop an engine oil consumption monitoring program to ascertain that there is enough oil to complete any ETOPS flight. The certificate holder's consumption limit must not exceed the manufacturer's recommendations, and it must trend oil consumption. The certificate holders trending program may be done manually or by an electronic means. The program must consider the amount of oil added at the departing ETOPS station with reference to the running average consumption as well as monitor for sudden increases in consumption. The monitoring must be continuous including non-ETOPS flights and the oil added at the ETOPS departure station. For example, after servicing, the oil consumption may be calculated by maintenance personnel as part of the pre-departure check. The amount of oil added also could be reported to a centralized maintenance control for calculation before the ETOPS flight. If the APU is required for ETOPS, it must be included in the oil consumption monitoring program. Any corrective actions taken regarding oil consumption must be verified before ETOPS departure.

m. APU In-Flight Start Program.

(1) If the airplane type certificate requires an APU but does not normally require the APU to operate during the ETOPS portion of the flight, the certificate holder must develop an in-flight start and run reliability program to ensure that the APU will continue to provide the performance and reliability established by the manufacturer. This monitoring program should include periodic sampling of each airplane's APU in-flight starting capabilities. Specifically, the certificate holder should ensure that each airplane's APU periodically is sampled rather than repeatedly sampling the same APUs. The certificate holder may adjust sampling intervals according to system performance and fleet maturity. The certificate holder and its CHDO should periodically review the certificate holder's APU in-flight start program data to ensure that the in-flight start reliability is maintained. Should the APU in-flight start rate 12-month rolling average drop below 95 percent, the certificate holder should initiate an investigation into any common cause effects or systemic errors in procedures.

(2) The certificate holder should include the criteria below in APU in-flight start program. The certificate holder should make APU in-flight starts subject to the following conditions:

(a) In-flight APU starts do not need to be performed on ETOPS flights; however, the APU must be in the ETOPS configuration in accordance with the applicable CMP document, if applicable, for credit to be allowed.

(b) If in-flight APU start is performed on an ETOPS flight, the start may be attempted on the return leg.

(c) The start attempt should be initiated before top of descent, or at such time that will ensure a 2-hour cold soak at altitude before the start attempt.

(d) Within route or track constrains, the objective would be met by attempting a start near the highest altitude assigned the route or track, and the final attempt near the lower altitude limits of the route or track, as defined by ATC. These altitudes must be representative of the ETOPS routes flown.

(e) If the APU fails to start on the first attempt, subsequent start attempts may be made within the limits of the airframe and APU manufacturer design specifications stated in the applicable airplane flight manual and airplane maintenance manual.

(3) The certificate holder must report any operationally required APU in-flight start failures occurring during actual ETOPS operations to its CHDO within 96 hours. The certificate holder also must report any occurrences of an ETOPS configured APU in-flight unsuccessful start attempt occurring during routine sampling (which exceed the airframe and APU manufacturer design specifications) to its CHDO. The final report should include corrective actions taken as well as the status of corrective action programs and fleet upgrades.

n. Maintenance Training.

(1) The certificate holder is responsible for ensuring that all maintenance personnel who perform maintenance on its ETOPS airplanes, including repair stations, vendors, and contract maintenance, have received adequate technical training for the specific airplane-engine combination it intends to operate in ETOPS.

(2) The certificate holder must review the existing airplane-engine combination maintenance training program with its CHDO to ensure that it adequately provides the necessary training. Additionally, the certificate holder must develop ETOPS specific training that focuses on the special nature of ETOPS and take measures to insure that this training is given to all personnel involved in ETOPS. ETOPS specific training is in addition to the certificate holder's accepted maintenance training program used to qualify individuals for specific airplanes and engines and may be included in the accepted maintenance training curricula. It thus becomes the certificate holder's ETOPS training program. The goal of this training is to ensure that all personnel involved in ETOPS properly accomplish ETOPS maintenance requirements. The certificate holder is responsible with acceptance from the CHDO to determine which personnel are involved in ETOPS, and must ensure that each person's level of ETOPS training is commensurate with their level of involvement with ETOPS airplanes. For example, a mechanic who is performing per-departure service checks may be required to have a higher level of ETOPS training and certification than a mechanic performing routine tasks on non ETOPS significant systems during a heavy maintenance check. A technician working ETOPS significant systems in a heavy maintenance visit environment must be appropriately trained for ETOPS, but need not be ETOPS certificated. Recurrent training in all maintenance arenas should be established and used to inform personnel involved in ETOPS about new equipment, requirements, operator programs, etc. Experience has shown recurrent training is a valuable instrument in ''lessons learned'' for ETOPS operations.

(3) ETOPS-qualified maintenance personnel are those who have successfully completed the certificate holder's ETOPS training program and

who have satisfactorily performed extended range tasks under the direct supervision of an FAA-certificated maintenance person who has had previous experience with maintaining the particular make and model airplane being used by the certificate holder. For new airplanes, it is understood the certificate holder may not have an FAA certified maintenance person available who has previous experience with that newly introduced make and model airplane. In this instance, the training received from the manufacturer's maintenance training program would be acceptable.

o. Configuration Maintenance Procedures (CMP).

(1) The CMP Standard specifies any additional configuration, maintenance, or operational requirement that is uniquely applicable to ETOPS. The requirements in the CMP are established by the FAA at the time of initial ETOPS type design approval of the airplane-engine combination. The CMP document is typically published and maintained by the airplane manufacturer and includes identified CMP requirements. The certificate holder must implement the basic configuration, maintenance, and operating procedures standard, identified in the CMP, before beginning ETOPS operations. If a CMP document exists for an ETOPS certificate holder's airplane, the certificate holder must ensure that all applicable:

(a) Configuration features are installed in the airplanes and engines,

(b) Maintenance procedures are incorporated into the maintenance program, and

(c) Demonstrated capabilities are incorporated into the flight operations manual and the minimum equipment list, as required.

(d) Operators must coordinate any deviation from the manufacturer's CMP requirements with the CHDO or Aircraft Certification Office (ACO), as required by the CMP document.

(2) Each certificate holder must develop a system to ensure all CMP requirements remain incorporated in its airplanes, programs, and manuals throughout the operational life of each airplane, for as long as they operate in ETOPS.

(3) The FAA will mandate any subsequent CMP changes necessary for continued safe ETOPS operations through the airworthiness directive process. The certificate holder should review and consider voluntarily incorporating any revised CMP standard that enhances airplane reliability and/or performance.

(4) The certificate holder should provide its CHDO a matrix detailing the CMP standard for its proposed ETOPS fleet. The matrix should specifically include each CMP item number, revision level, item description, and reference documentation describing the incorporation method, date, and place.

Note: There may not be a CMP for aircraft operating under ETOPS manufactured prior to February 16, 2015 that are not type designed for ETOPS.

p. Reporting Requirements.

(1) In addition to the reporting requirements of §§ 135.415 and 135.417, the certificate holder must report the following events to the CHDO.

(a) IFSDs, except planned IFSDs performed for flight test.

(b) Diversions and turnbacks for failures, malfunctions, or defects associated with an airplane or engine system.

(c) Uncommanded power or thrust changes or surges.

(d) Inability to control the engine or obtain desired power or thrust.

(e) Inadvertent fuel loss or unavailability, or uncorrectable fuel imbalance in flight.

(f) Failures, malfunctions, or defects associated with ETOPS Significant Systems.

(g) Any event that would jeopardize the safe flight and landing of the airplane on an ETOPS flight

(2) The certificate holder must submit a report quarterly to the CHDO and the airplane and engine manufacturer for each airplane authorized for ETOPS containing the hours and cycles for each airplane. The reports may be submitted in an electronic format.

Chapter 4. ETOPS Flight Planning

401. Time-Limited Systems Requirements.

a. For ETOPS, the time required to fly the distance to the planned ETOPS alternate(s), at the all-engines-operating cruise speed, correcting for wind and temperature, may not exceed the time specified in the Airplane Flight Manual for the airplane's most limiting fire suppression system time required by regulation for any cargo or baggage compartments (if installed), minus 15 minutes.

b. Except as provided in a. above for ETOPS, the time required to fly the distance to the planned ETOPS alternate(s), at the approved one-engine inoperative cruise speed, correcting for wind and temperature, may not exceed the time specified in the Airplane Flight Manual for the airplane's most time limited system time (other than the most limiting fire suppression system time required by regulation for any cargo or baggage compartments) minus 15 minutes.

Note: Certificate holders operating multi-engine turbine-powered airplanes whose Airplane Flight Manual does not contain the time-limited system information needed to comply with the requirements of a and b above may continue ETOPS operations until February 15, 2015.

402. Flight Planning/Management Requirements.

a. Flight Information. In addition to the requirements of 14 CFR part 91, § 91.503, the certificate holder should ensure that the following information is available for use by the flight crewmember before departure:

(1) Planned route of flight.

(2) ETOPS entry/exit points.

(3) Planned ETOPS alternate airports.

(4) Equal time points.

(5) Fuel consumption and expected use log.

(6) Flight progress reporting points.

(7) Weather and status of services and facilities at all ETOPS alternate airports as well as a reasonable number of adequate airports with weather greater than approach minimums other than the designated ETOPS alternates along the planned route that could be used for diversion before departure.

b. Communication. Each airplane used in ETOPS must be equipped with two independent communication transmitters and receivers, at least one of which allows voice communication. Both of these systems must be operational at dispatch. The airplane must also have two headsets or one headset and one speaker installed and operational. In areas where voice communication facilities are not available, or are of such poor quality that voice communication is not possible, communication using an alternative system such as data link must be substituted.

c. Potential Diversion Airports after Departure.

(1) After departure, designated ETOPS alternate airports must remain at or above forecast operating weather minima. If the weather at the designated airports falls below operating minima, the flight crewmember must designate new ETOPS alternate airports within the ETOPS diversion limit that meet appropriate operating weather minima.

(2) The pilot or certificate holder should monitor the airports within the ETOPS area of operation that could be used for diversion for deterioration in the weather and limitations in the availability of facilities and services that would render an airport unsuitable for landing in the event of a diversion. If this monitoring is done by the certificate

holder, a reliable method of communication with the airplane must be readily available.

(3) During the course of the flight, the flight crewmember must be aware of significant changes in conditions at the designated ETOPS alternates, particularly those conditions that would render an airport unsuitable for landing and improvement in airport weather to conditions above operating minima.

(4) Before an ETOPS flight proceeds beyond the ETOPS entry point, the weather during the expected times of arrival (from the earliest to the latest possible landing time) at the designated ETOPS alternates, as well as the landing distances, airport services, and facilities should be evaluated. If weather conditions at each ETOPS alternate are forecast to be below the operating minima in the certificate holder's operations specifications for that airport during this time (from the earliest to the latest possible landing time), another ETOPS alternate must be substituted within the maximum ETOPS diversion time that could be authorized for that flight with weather conditions at or above operating minima. The maximum diversion time determined by the newly selected ETOPS alternate(s) must not exceed 240 minutes.

(5) Once the flight has gone beyond the ETOPS Entry Point, an unexpected worsening of the weather at the designated ETOPS alternate to below operating landing minima, or any event that makes the runway at that airport unusable does not require a turn back. It is expected that the pilot-in-command (PIC) must, in coordination with the dispatcher if appropriate, exercise judgment in evaluating the situation and make a decision as to the safest course of action. This may be a turn back, or re-routing to another ETOPS alternate, or continuing on its planned routing.

d. Engine Failures. All multi-engine turbine-powered part 135 airplanes must satisfy the performance requirements of part 135 subpart I in the event of engine(s) failure. The purpose of ETOPS flight planning is to provide the flight crew with a minimum number of airports that are suitable for an en route diversion for any circumstance, including engine failure. For any situation that the pilot in command determines a diversion is necessary, no part of this AC is meant in any way to prejudice or limit the final authority and responsibility of the PIC for the safe operation of the airplane. The decision to divert to the planned ETOPS alternate or any other available airport will be a decision of the pilot in command based on his/her determination of what is the most suitable for the situation. The PIC should consider all relevant factors in determining the suitability of an airport. The following factors and others may be relevant in determining whether or not an airport is suitable:

- Airplane configuration, weight, systems status, and fuel remaining
- Wind and weather conditions en route at the diversion altitude
- Minimum altitudes en route to the diversion airport
- Fuel burn to the diversion airport
- Airport nearby terrain, weather and wind
- Runways available and runway surface condition
- Approach navigation aids and lighting available
- Availability of crash, rescue and firefighting equipment
- Facilities for passenger and crewmember disembarkation and accommodations
- Pilot's familiarity with the airport

e. One Engine Failure. When operating a two engine airplane with one-engine inoperative, none of the following factors should be considered sufficient justification to fly beyond the nearest suitable airport:

- The fuel supply is sufficient to fly beyond the nearest suitable airport
- Passenger accommodations, other than passenger safety
- Availability of maintenance or repair resource

f. System Failures and Partial Failures. If, as a result of reevaluating airplane systems, a change in flight plan is required, the pilot should revise the flight plan information based on the conditions, including weather conditions, at designated ETOPS alternates.

g. Other Diversion Scenarios. During ETOPS an airplane may divert for reasons other than an engine or systems failure such as medical emergencies, onboard fire or decompression. The nature of the emergency and the possible consequences to the airplane, passengers and crew will dictate the best course of action suitable to the specific en route contingency. The flight crew should decide on the best course of action based on all available information. The ETOPS Alternate Airports required by Appendix G to part 135, § G135.2.5, Operational Requirements, and designated for a particular flight provide one option to the pilot in command. However, these ETOPS alternates may not be the only airports available for the diversion and nothing in this guidance in any way limits the authority of the PIC.

403. ETOPS Fuel Planning Requirements. A certificate holder should consider the following factors when determining the amount of fuel to carry onboard an airplane departing on an ETOPS flight:

a. Unique Planning Factors.

(1) Current forecast winds and meteorological conditions along the expected flight path at the appropriate one-engine inoperative cruise altitude and throughout the approach and landing;

(2) Any necessary operation of ice protection systems and performance loss because of ice accretion on the unprotected surfaces of the airplane;

(3) Any necessary operation of the APU, including APU oil consumption;

(4) Loss of airplane pressurization; consideration should be given to flying at an altitude meeting passenger and crewmember oxygen requirements in the event of loss of pressurization;

(5) Holding for 15 minutes over the airport with a subsequent approach and landing;

(6) Required navigational accuracy; and

(7) Any known air traffic control delays or restrictions.

b. Fuel Supply. No person may dispatch or release for flight or takeoff a multi-engine turbine-powered airplane in ETOPS unless the fuel carried onboard is the greater of:

(1) Fuel required under § 135.223, or;

(2) Considering wind and other weather conditions expected, it has enough fuel to satisfy (a) through (d) below:

(a) Greater of the fuel sufficient to fly to an ETOPS alternate:

1. Assuming a rapid decompression at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 135.157, or;

2. At the approved one-engine inoperative cruise speed assuming a rapid decompression and a simultaneous engine failure at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 135.157, or;

3. At the approved one-engine inoperative cruise speed assuming an engine failure at the most critical point followed by descent to the one-engine inoperative cruise altitude.

(b) Upon reaching the alternate, hold at 1,500 ft above field elevation for 15 minutes and then conduct an instrument approach and land.

(c) Add a 5 percent wind speed factor (that is, an increment to headwind or a decrement to tailwind) on to the actual forecast wind used to calculate fuel in (2)(a) above to account for any potential errors in wind forecasting. If a certificate holder is not using the actual forecast

wind based on a wind model acceptable to the FAA, allow 5 percent of the fuel required for (2)(a) above, as reserve fuel to allow for errors in wind data. A wind aloft forecast distributed worldwide by the World Area Forecast System is an example of a wind model acceptable to the FAA.

(d) After completing the calculation in (c), compensate in (2)(a) above for the greater of:

1. The effect of airframe icing during 10 percent of the time during which icing is forecast (including ice accumulation on unprotected surfaces, and the fuel used by engine and wing anti-ice during this period). Unless a reliable icing forecast is available, icing may be presumed to occur when the total air temperature at the approved one-engine cruise speed is less than +10 degrees Celsius, or if the outside air temperature is between 0 degrees Celsius and −20 degrees Celsius with a relative humidity of 55 percent or greater.

2. Fuel for engine anti-ice, and if appropriate wing anti-ice for the entire time during which icing is forecast,

(e) Unless the certificate holder has a program established to monitor airplane in service deterioration in cruise fuel burn performance and includes in fuel supply calculations fuel sufficient to compensate for any such deterioration, increase the final calculated fuel supply in (2)(a) (after completing the calculation in (c)) by 5 percent to account for deterioration in cruise fuel burn performance.

(f) If the APU is a required power source, then its fuel consumption must be accounted for during the appropriate phases of flight.

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(g) In computing the ETOPS alternate fuel supply, advantage may be taken of driftdown computed at the approved one-engine inoperative cruise speed. Accounting of wing anti-ice as in (d) above may apply to some models of airplane based on their characteristics and the manufacturer's recommended procedures.

404. ETOPS Alternate Weather Minima Requirements. Alternate weather minima standards specified in a certificate holder's operations specifications apply to destination and en route alternates. A summary of a typical certificate holder's ETOPS operations specifications is reflected in the table below. An individual certificate holder's operations specification will reflect its current requirements. Although no consideration for the use of global positioning system/Area Navigation approaches is presented here, operators may request to receive this authorization through the FAA, which would be reflected in the operator's operations specifications. Appropriate ETOPS alternate minima will be determined by AFS-1, Director, Flight Standards Service.

ETOPS ALTERNATE MINIMA

Approach Facility Configuration[1]	Alternate Airport IFR Weather Minimum Ceiling[2]	Alternate Airport IFR Weather Minimum Visibility[3]
For airports with at least one operational navigational facility providing straight –in non-precision approach procedure, or Category I precision approach, or, when applicable, a circling maneuver from an instrument approach procedure (IAP).	Add 400 ft to the MDA or DH as applicable	Add 1 statute mile or 1,600 meters to the landing minimum
For airports with at least two operational navigational facilities, each providing a straight in approach procedure to different suitable runways.	Add 200 ft to the higher DH or MDA of the two approaches used.	Add 1/2 statute mile or 800 meters[4] to the higher authorized landing minimum of the two approaches used.
One useable authorized category II ILS IAP	300 feet	3/4 statute mile (1,200 meters) or RVR 4,000 feet (1,200 meters)
One useable authorized category III ILS IAP	200 feet	1/2 statute mile (800 meters[4]) or RVR 1,800 feet (550 meters)

[1] When determining the usability of an IAP, wind velocity plus gust must be forecast within operating limits, including reduced visibility limits.
[2] Conditional forecast elements need not be considered, except that a PROB40 or TEMPO condition below the lowest applicable operating minima should be considered.
[3] When departing using the provisions of the MEL, those MEL limitations affecting instrument approach minima should be considered in determining ETOPS alternate minima.
[4] For operations outside United States, because of variations in the international metric weather forecasting standards, 700 meters may be used in lieu of 800 meters.

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405. Landing Distance Requirements. For the runway expected to be used, the landing distance available must be sufficient based on airplane flight manual landing performance data to meet the landing distance limitations specified in § 135.385 or § 135.393. The certificate holder should take into account the altitude of the airport, wind conditions, runway surface conditions, and airplane handling characteristics.

Chapter 5. Applications To Conduct Etops

The unique nature of long range operations necessitates an evaluation of these operations to ensure that the certificate holder's proposed programs are effective. The FAA will review the certificate holder's documentation and training programs to validate that they are appropriate for ETOPS. Each certificate holder applying for ETOPS approval should demonstrate the ability to continuously maintain and operate the particular airframe systems and engines at levels of reliability appropriate for the intended operation. The certificate holder also should show that it has trained its personnel to achieve competency in ETOPS. The certificate holder should show compliance with the flight operations and, if applicable, the maintenance requirements of this AC.

Before a certificate holder is granted operational approval, the FAA Administrator will examine its capability to conduct operations and implement effective ETOPS programs in accordance with the criteria detailed in this AC. Only certificate holders who have demonstrated capability to conduct long range flights will be considered for approval. The flights conducted under ETOPS authority will be limited to a maximum diversion time of 240 minutes from an ETOPS alternate airport, at an approved one-engine inoperative cruise speed (under standard conditions in still air) selected by the certificate holder from a range of speeds approved by the FAA that is within the certificated operating limits of the airplane.

501. Application Requirements for ETOPS Approval.

a. A certificate holder requesting approval for ETOPS should submit the request, with any required supporting data, to its CHDO at least 60 days before the proposed start of ETOPS operations. The certificate holder's application will be for a specific airplane-engine combination and should address the following topics: (See Appendix 2 for an application checklist.)

b. Airplane. The applicant should list the specific make and model of airplane and engine and the airplane serial and registration numbers to be used in ETOPS.

c. Airplane Performance. The altitudes and airspeeds used for establishing the ETOPS area of operation for each airframe-engine combination should be shown to permit compliance with the terrain and obstruction clearance requirements of §§ 135.381, 135.383 and the requirements of 135.181(a)(2), as may be applicable.

d. MEL. The certificate holder should submit an MEL, or revision to its MEL, developed in accordance with the Master MEL, appropriate to ETOPS.

e. Communication and Navigation Facilities. As per § 135.165, the certificate holder must demonstrate the availability of two-way communication during diversion at anticipated diversion altitudes.

f. Training. The certificate holder should document that it has incorporated ETOPS training into its crewmember training programs, and that personnel conducting ETOPS training are properly qualified.

502. Operating Experience Requirements.

a. Each certificate holder requesting approval to conduct ETOPS should have appropriate operational experience, including sufficient maintenance and operation familiarity with the particular airframe-engine combination. Appropriate operational experience involves conducting long-range flights that require more complex flight planning and careful execution in areas where diversion alternatives are limited.

b. A certificate holder must satisfy the operating experience requirements of § G135.2.2 as stated in Chapter 3, Paragraph 302a of this AC.

503. Validation Flight Requirements.

a. Before granting initial ETOPS authorization, the FAA may require validation testing to demonstrate the certificate holder's ability to safely conduct ETOPS. Validation testing may be included as part of a certificate holder's airplane proving test as required by § 135.145. Validation testing can include evaluation of the certificate holder's policies and procedures, systems, and, where practical, flight simulation or table-top simulation. In some cases, a validation flight may be required.

b. If required, a validation flight can be included in proving flights and can be flown using representative ETOPS routes. AFS–1 will determine the conditions for each certificate holder's validation testing following a review, on a case-by-case basis, of the certificate holder's experience and the proposed operation. In the event a proving test did not include ETOPS validation, the certificate holder shall notify their CHDO at least 7 days before conducting the first ETOPS flight to allow the FAA to monitor the operation.

Note: Validation flights may not be required for certificate holders that meet the operating experience requirements of § G135.2.2.

Chapter 6. FAA Approval

601. ETOPS Approval Procedures.

a. For certificate holders seeking ETOPS authority for the first time, the application and supporting data, along with the CHDO's principal inspectors (principal maintenance inspector, principal avionics inspector and principal operations inspector) recommendations are forwarded to AFS–1 for review and concurrence. AFS–1 will authorize ETOPS operations or state what additional requirements are necessary to gain ETOPS authorization. When authorized by AFS–1, the CHDO will issue the certificate holder operations specifications authorizing ETOPS.

b. For certificate holders that have existing ETOPS authority, the application and supporting data should be forwarded to the CHDO for approval. The CHDO will issue the certificate holder operations specifications authorizing additional ETOPS airplane-engine combinations and/or areas of operation.

602. ETOPS Operations Specifications. As a minimum, operations specifications for ETOPS should provide the following authorizations and limitations:

a. Approved airframe-engine combination(s).

b. Current approved CMP standard required for ETOPS, if appropriate.

c. ETOPS area(s) of operation.

d. Approved maintenance and enhanced CASS program for ETOPS including those items specified in the type design approved standard, if required.

e. Identification of the airplanes authorized for ETOPS by make, model, serial, and registration number.

603. Processes after Receiving ETOPS Authority. If the certificate holder fails to maintain its ETOPS program and operation in accordance with regulations and this guidance, or if the airplane does not perform in accordance with its ETOPS type design requirements, the CHDO may initiate a special evaluation. This may result in the imposition of any necessary, prudent operational restrictions and corrective action to resolve problems in a timely manner. If any problem associated with airplane design is identified, the CHDO should notify the ACO responsible for type design approval.

604. Changes to Approved ETOPS Operations, Maintenance, and Training Procedures. Following final ETOPS approval, if a certificate holder determines a need to make substantial changes to its ETOPS operations,

maintenance and training procedures, it should submit such changes in a timely manner to the CHDO for review and acceptance before incorporation. The certificate holder and its CHDO should negotiate what constitutes a substantial change to allow flexibility and take into consideration a certificate holder's ETOPS experience. What is considered substantial for a new entrant ETOPS certificate holder may be considerably different than for a certificate holder with many years of ETOPS experience.

Appendix 1. Definitions

The following definitions are applicable to extended operations (ETOPS). They include definitions from Title 14 of the Code of Federal Regulations (14 CFR) part 1 and part 135 definitions as well as terms that are used within the context of this advisory circular (AC) with respect to ETOPS:

1. Adequate Airport. An airport that an airplane operator may list with approval from the Federal Aviation Administration (FAA) because that airport meets the landing limitations of 14 CFR part 135, § 135.385 or is a military airport that is active and operational (Airports outside FAA jurisdiction may be considered adequate provided that they are determined to meet the equivalent standards and intent of § 135.385.

2. ETOPS(Extended Operations). An operation authorized under part 135 that has a point on a planned routing that is beyond 180 minutes flying time (in still air at normal cruise speed with one-engine inoperative) from an adequate airport.

3. ETOPS Area of Operation. The area between 180 minutes and 240 minutes flying time (as determined in the ETOPS definition above) from an adequate airport.

4. ETOPS Alternate Airport. An adequate airport listed in the certificate holder's operations specifications that is designated in a dispatch or flight release for use in the event of a diversion during ETOPS. This definition applies to flight planning and does not in any way limit the authority of the pilot-in-command during flight.

5. ETOPS Entry Point. ETOPS entry point is the first point on the route of an authorized flight which is more than 180 minutes from an adequate airport. The ETOPS entry point is calculated at an approved one-engine inoperative cruise speed under standard conditions in still air.

6. ETOPS Dual Maintenance. Maintenance on the ''same'' ETOPS significant system. Dual maintenance is maintenance actions performed on the same element of identical, but separate ETOPS Significant Systems during a scheduled or unscheduled maintenance visit. Dual maintenance on ''substantially similar'' ETOPS significant systems means maintenance actions performed on engine-driven components on both engines during the same maintenance visit.

7. ETOPS Significant System. An airplane system, including the propulsion system, the failure or malfunctioning of which could adversely affect the safety of an ETOPS flight, or the continued safe flight and landing of an airplane during an ETOPS diversion. Each ETOPS significant system is either an ETOPS group 1 significant system or an ETOPS group 2 significant system.

a. An ETOPS group 1 Significant System

(1) Has fail-safe characteristics directly linked to the degree of redundancy provided by the number of engines on the airplane.

(2) Is a system, the failure or malfunction of which could result in an IFSD, loss of thrust control, or other power loss.

(3) Contributes significantly to the safety of an ETOPS diversion by providing additional redundancy for any system power source lost as a result of an inoperative engine.

(4) Is essential for prolonged operation of an airplane at engine inoperative altitudes.

b. An ETOPS group 2 significant system is an ETOPS significant system that is not an ETOPS group 1 significant system.

8. ETOPS Qualified Personnel. A person performing maintenance for the certificate holder, who has satisfactorily completed the certificate holder's ETOPS training program.

9. Equal Time Point (ETP). A point on the route of flight where the flight time, considering wind, to each of two selected airports is equal.

10. In-Flight Shut Down (IFSD). For ETOPS, when an engine ceases to function (when the airplane is airborne) and is shutdown, whether self induced, flight crew initiated or caused by an external influence. The FAA considers IFSD for all causes: for example, flameout, internal failure, flight crew initiated shutdown, foreign object ingestion, icing, inability to obtain or control desired thrust or power, and cycling of the start control, however briefly, even if the engine operates normally for the remainder of the flight. This definition excludes the airborne cessation of the functioning of an engine when immediately followed by an automatic engine relight and when an engine does not achieve desired thrust or power but is not shutdown.

11. North Polar Area. The entire area north of 78° North latitude.

12. One-Engine Inoperative Cruise Speed (Approved). For the purposes of the part 135 applicable to ETOPS, the one-engine inoperative cruise speed is a speed selected by the certificate holder from a range of speeds approved by the FAA that is within the certificated operating limits of the airplane. This speed is used to determine whether a proposed routing is subject to the requirements of Appendix G of part 135 (ETOPS) and is used during ETOPS flight planning for calculating both fuel reserve requirements and the still air distance associated with the ETOPS area of operation for a specific flight.

13. Satellite Communication (SATCOM). Satellite communication equipment.

Appendix 2. ETOPS Application Checklists

The following checklists are provided to facilitate a certificate holder's application for extended operations (ETOPS) approval.

1. ETOPS Application Checklist—Maintenance

Type Design

1. Date of type design and review of each airframe/engine for ETOPS.
2. In-service experience for each airframe/engine combination:
   a. Number of months/years of operational experience with the specific airframe/engine combination,
   b. Total number of international (excluding Canada and Mexico) flights with the specific airframe/engine,
   c. Airframe/engine hours and cycles,
   d. In-flight shutdown rate (all causes),
   e. Mean time between failure for ETOPS critical systems/components,
   f. Record of auxiliary power unit (APU) start and run reliability,
   g. Record of delays and cancellations, and identify causes by airplane system,
   h. Record of significant certificate holder events:
   (1) Uncommanded power changes (surge or roll back),
   (2) Inability to control engine or obtain desired power,
   (3) Total number of in-flight shutdown events.

ETOPS Maintenance Requirements

A Supplemental ETOPS Maintenance Program is required and must contain the following elements:

1. ETOPS Manual.
   a. Identify as a chapter in the general maintenance manual.
   b. Submit to the Flight Standards District Office 60 days before the implementation of ETOPS flights.
   c. Preclude identical action being applied to multiple similar elements in ETOPS critical system (for example, fuel control change on both engines).
   d. Identify ETOPS tasks on routine work forms and instructions.
   e. Clearly define ETOPS procedures in maintenance program, such as, centralized maintenance control.
   f. Develop ETOPS service check:
   (1) Verify the airplane status and ensure that certain critical items are acceptable.
   (2) Have check signed off by an ETOPS qualified person.
2. Oil Consumption Program.
   a. Reflect manufacturers' recommendations.
   b. Be sensitive to oil consumption trends.
   c. Record the amount at dispatch stations.
   d. Monitor running average consumption.
   e. Include Spectrographic Oil Analysis Program samples, if meaningful to make and model.
   f. Add APU to the program.
3. Engine Condition Monitoring.
   a. Describe the parameters to be monitored.
   b. Identify method of data collection.
   c. Describe corrective action process.
   d. Detects deterioration at an early stage.
4. Resolution of Airplane Discrepancies.
   a. Describe verification program to ensure corrective action following:
   (1) Engine shutdown,
   (2) Primary system failure,

(3) Adverse trends or any events, which require verification flight (or other action to assure their accomplishment).
b. Describe who must initiate verification actions and the section responsible for the determination of what action is necessary.
c. Describe how to resolve primary systems (APU).
d. Describe the conditions requiring verification actions.
5. Enhanced CASS Program.
a. Should be event oriented.
b. Incorporate reporting procedures (96 hours) for significant events detrimental to ETOPS.
(1) In addition to the items in mechanical reliability reports (Title 14 of the Code of Federal Regulations (14 CFR) part 135, §§ 135.415 and 135.417) the following are included:
- In-flight shutdowns
- Diversion or turnback
- Uncommanded power changes or surges
- Inability to control the engine or obtain desired power
- Problems with systems critical to ETOPS
- Any other event detrimental to ETOPS

(2) The report should identify the following:
- Airplane identification (make and ''N'' number)
- Engine identification (make and serial number)
- Total time, cycles and time since last shop visit
- For systems: time since overhaul or last inspection of the unit
- Phase of flight
- Corrective action

6. Propulsion System Monitoring In-Flight Shut Down (IFSD). Describe the process to investigate all IFSDs.
7. Maintenance Training. Focus on special nature of ETOPS and maintenance requirements.
8. ETOPS Parts Control.
a. Ensures proper parts and configuration are maintained for ETOPS.
b. Verify parts placed on ETOPS airplanes during parts borrowing or pooling arrangements.
c. Tracks and verifies those parts used after repair or overhaul.

2. ETOPS Application Checklist–Operations

1. Type Design.
a. Date of type design approval of each airframe/engine for ETOPS and maximum diversion time approved for the airframe/engine.
b. In-service experience for each airframe/engine combination:

Note: The data for item a. may be submitted in the maintenance portion of the application.

2. Authorized Area of Operations for Each Airframe/Engine Combination.
a. Maximum diversion time and distance from an adequate airport. Show performance chart, which is used to calculate the distance.
b. Describe how flight planning will consider terrain clearance along planned and diversion routes based on a selected range of single-engine speeds:
c. Calculate obstacle clearance as follows:
(1) The diversion profile/airspeed used to calculate the area of operations should be used in evaluating obstacle clearance;
(2) NET performance data should be used;
(3) Maximum possible diversion gross weight should be used;
(4) Plus 10 temperature deviation should be used;
(5) Wing and engine anti-ice should be assumed to be OFF;
(6) Advantage may be taken of drift down from cruise altitude to single engine inoperative cruise altitude; and
(7) All terrain and obstructions should be cleared by 1000 feet (2000 feet in driftdown).
3. Plotting Chart Showing Area of Operations. Describe how the flightcrew will be provided a plotting chart. Diversion distance circles should be plotted from en route alternates used to calculate the area of operations.
4. Copy of Minimum Equipment List. Show compliance with Master Minimum Equipment List. (For each airframe/engine combination, if necessary.)
5. Sample Copies.
a. Computer flight plan,
b. Plotting chart with annotations required for typical flight (e.g., ETP's, route of flight). May be shown on plotting chart submitted under item b., (3), above.
6. En Route Alternates.
a. Describe how ETOPS alternates will be selected to:
(1) Indicate compliance with landing distances, services, and facilities.
(2) Show consideration of en route alternate minimums and crosswind component in selection of en route alternates.
b. Show maximum crosswind component used for ETOPS alternate selection at dispatch.
c. Ensure en route alternate minimums comply with Operation Specification paragraph C055.
d. Show compliance with evaluation of alternate conditions during the en-route phase.
7. Communication and Navigation Facilities. Describe how crewmembers will determine adequacy of communication and navigation facilities.
8. Airplane Performance Data. For each airframe/engine combination, show operations manual pages used as a reference to insure compliance with the requirements in this AC.
9. Fuel and Oil Supply. Show how crewmembers will comply with the fuel and oil requirements.
10. Flightcrew member Training and Evaluation Program.
a. Show where flight crewmember training items identified in Section 303 of this AC are covered.
b. Show that any training issues, if appropriate, identified in the Flight Standardization Board have been incorporated in the training program.
11. Weather. Show how the crewmembers will obtain required weather information.
12. Equipment. Show how the crewmembers will comply with § 135.165 and Appendix G to part 135.
13. Plan of Validation Flight or Flights.
a. Proposed dates,
b. Diversion required,
c. Revenue or non-revenue.

Appendix 3. Polar Operations Under 14 CFR Part 135

1. Title 14 of the Code of Federal Regulations (14 CFR) part 135, § 135.98 states that no certificate holder may operate an aircraft in the region north of 78° North latitude (''North Polar Area''), other than intrastate operations wholly within the state of Alaska, unless authorized by the Federal Aviation Administration (FAA). This appendix provides an acceptable means, but not the only means, of conducting Polar operations in accordance with § 135.98.

2. Since Polar operational guidance is also provided for certificate holders operating under 14 CFR part 121, the following advisory circulars (AC) may be helpful in planning Polar operations.

a. AC 120–ETOPS, Extended Operations.

b. AC 120–61A, In-Flight Radiation Exposure.

3. NORTH POLAR OPERATIONS. Before conducting operations in the North Polar Area, a certificate holder must develop plans in preparation for all such flights. Certificate holders must consider airplane and equipment configuration requirements, and in planning, must also consider the following items that are unique to Polar operations.

a. Airport Requirements for Designation as Polar-Diversion Airports. Before each flight, certificate holders must designate alternate airports that can be used in case an en route diversion is necessary. The airplane should have a reasonable assurance that the weather during periods when the certificate holder would need the services of the airport are within the operating limits of the airplane. The airplane should be able to make a safe landing and maneuver off the runway at the diversion airport. In addition, those airports identified for use during an en route diversion should be capable of protecting the safety of all personnel by allowing:

(1) Safe offload of passengers and crewmember during possible adverse weather conditions;

(2) Providing for the physiological needs of the passengers and crewmember until a safe evacuation is completed; and

(3) Safe extraction of passengers and crewmember as soon as possible (execution and completion of the recovery should be within 12 to 48 hours following landing).

b. Recovery Plan for Passengers at Diversion Alternates. Passenger recovery plans are required for all approved and designated diversion airports used in part 135 operations in Polar areas. All certificate holders conducting North Polar operations must have a plan for recovering passengers at these designated diversion airports. The recovery plan should address the care and safety of passengers and crewmembers at the diversion airport.

(1) A specific passenger recovery plan is required for each diversion airport listed in an operator's operations specifications for this operation (Operations Specification B055, North Polar Operations).

(2) The certificate holder's formal passenger recovery plan should provide a

means to validate acceptable levels of infrastructure to provide for an orderly process for the care and well being of the passengers and crewmembers to include continuing safety, shelter, facilities that provide for physiological needs, and food. Any list of considerations for the passengers and crewmembers need not be an exhaustive list; however, in cases involving operations in demanding environments, plans may need to be detailed enough to provide for medical care, communications, methods for securing alternative expedited travel, extraction, and continued travel provisions for the crewmembers and passengers. It has generally been accepted that any plan should be designed to effectuate closure within 48 hours to be viewed as meeting the overall requirement to provide for the care and safety of the passengers and crewmembers.

c. Fuel Freeze Strategy and Monitoring Requirements for Polar Operations. Certificate holders must develop a fuel freeze strategy and procedures for monitoring fuel freezing for operations in the North Polar Area. A fuel freeze analysis program in lieu of using the standard minimum fuel freeze temperatures for specific types of fuel may be used. In such cases, the certificate holder's fuel freeze analysis and monitoring program for the airplane fuel load must be acceptable to the FAA Administrator. The certificate holder should have procedures for determining the fuel freeze temperature of the actual fuel load on board the airplane. These procedures relative to determining the fuel freeze temperature and monitoring the actual temperature of the fuel on board should require appropriate levels of coordination between maintenance and the flight crewmember.

d. Minimum Equipment List (MEL) Considerations for Polar Operations. Before receiving approval to conduct polar operations, a certificate holder must review their MEL for such operations and should amend their MEL. The following systems and equipment should be addressed in the MEL based on specific needs applicable to this operation.

(1) Fuel Quantity Indicating System (to include a fuel tank temperature indicating system).

(2) Communication system(s) needed for effective communications by the flight crewmember while in flight.

(3) Expanded medical kit.

e. Training Issues for Polar Operations. Before conducting Polar operations, certificate holders must ensure that flight crewmembers are trained on any applicable passenger recovery plan used in this operation. Certificate holders should also ensure that flight crewmembers are trained on the following items, which should be included in a certificate holder's approved training programs:

(1) Atmospheric pressure at Field Elevation/Barometric pressure for Local Altimeter Setting and meter/feet conversion issues (flight crewmember training).

(2) Training requirements for fuel freeze (maintenance and flight crewmember training).

(3) General polar-specific training on weather patterns and aircraft system limitations (flight crewmember training).

(4) Proper use of the cold weather anti-exposure suit, if required (flight crewmember training).

(5) Radiation exposure (see AC 120–61A, In-Flight Radiation Exposure).

f. Special Equipment for Polar Operations. Certificate holders must have at least two cold weather anti-exposure suit(s) for the crewmembers on the airplane if outside coordination by a crewmember at a diversion airport with extreme climatic conditions is determined to be necessary. The certificate holder may be relieved of this requirement based on seasonal temperatures that would render the use of such suits unnecessary. This determination must be made with concurrence of the CHDO.

g. Additional Flight Planning Issues. In addition to the above, the certificate holder must have a plan to ensure communication capability for operations in the North Polar Area and a plan for mitigating crew exposure to radiation during solar flare activity.

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Federal Register

Monday,
September 17, 2007

Part VI

The President

Proclamation 8175—National Hispanic Heritage Month, 2007

Proclamation 8176—National Farm Safety and Health Week, 2007

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The President

Proclamation 8175 of September 12, 2007

National Hispanic Heritage Month, 2007

By the President of the United States of America

A Proclamation

Hispanic Americans have strengthened our country and contributed to the spirit of America. National Hispanic Heritage Month is an opportunity to honor these contributions and celebrate the rich cultural traditions of our Hispanic-American community.

Hispanic Americans have helped establish America as a place of freedom and opportunity, and their contributions have illustrated what is best about our great Nation. Their hard work, love of country, and deep commitment to faith and family have shaped the character of our country and helped preserve the values we all cherish. By sharing their vibrant culture and heritage, Hispanic Americans have also enriched the American experience and helped define the unique fabric of our Nation.

Americans of Hispanic heritage have carried on a proud tradition of service to our Nation. In times of great consequence, they have answered the call to defend America as members of our Armed Forces. These brave men and women bring honor to America, and we are grateful for their service and sacrifice. In our towns and communities, Hispanic Americans have also shown the good heart of our Nation by volunteering to help their fellow Americans. Their kindness and compassion have made a difference in the lives of others and have made our country a more hopeful place for all.

During National Hispanic Heritage Month, we celebrate the diversity that makes America stronger, and we recognize the many ways Hispanic Americans have enriched our Nation. To honor the achievements of Hispanic Americans, the Congress, by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 15 through October 15, 2007, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs.

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

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Presidential Documents

Proclamation 8176 of September 12, 2007

National Farm Safety and Health Week, 2007

By the President of the United States of America

A Proclamation

America's farmers and ranchers are good stewards of our land, providing a healthy, safe, and abundant food supply for our country and for people around the world. During National Farm Safety and Health Week, we pay tribute to our farmers and ranchers and their families for their contributions to our Nation, and we raise awareness of the importance of practicing and promoting safe work habits and conditions on farms and ranches.

Making a living off the land exposes agricultural workers to many potential dangers, such as extreme weather conditions, fertilizers and chemicals, and heavy machinery. Taking steps to identify these hazards and instructing family members in safe practices will help save lives and prevent injuries. Farmers and ranchers can help avoid accidents and protect lives by staying informed, being proactive, and remaining vigilant.

Across the United States, farm and ranch communities embody the values of hard work, faith, and love of family. This week and throughout the year, we encourage farmers and ranchers to practice responsible work habits as they continue to help America remain strong and prosperous.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 16 through September 22, 2007, as National Farm Safety and Health Week. I call upon the agencies, organizations, and businesses that serve America's agricultural workers to continue to strengthen their commitment to promoting farm safety and health programs. I also urge all Americans to honor our agricultural heritage and to recognize our farmers and ranchers for their remarkable contributions to our Nation.

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

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also

available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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)

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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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CFR CHECKLIST

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700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
*200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
*200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
*1–299	(869–062–00129–1)	50.00	July 1, 2007
*300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–060–00130–1)	61.00	[8] July 1, 2006
36 Parts:			
*1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–060–00136–1)	62.00	July 1, 2006
***39**	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
*52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
*52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
*60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–062–00162–2)	39.00	[9] July 1, 2007
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–062–00166–5)	56.00	[9] July 1, 2007
425–699	(869–060–00166–2)	61.00	July 1, 2006
*700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.